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Disputes Resolution in a North China Village

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Foreword

Zhao Xudong's work on disputes resolution and authority in a North China village will soon be published. He invited me to write a preface for the book, which I accepted with reverence and awe.

Power and Justice: Disputes Resolution in a North China Village is developed the basis of Xudong's Ph.D. dissertation. In 1995, Xudong was admitted to Department of Sociology, Institute of Sociology and Anthropology at Peking University as a Ph.D. student, studying urban and rural sociology supervised by Prof. Fei Xiaotong. I was fortunate to assist Prof. Fei to guide Xudong on his research. Led by Prof. Fei, the professors and graduate students in our institute had conducted many researches on rural society and social development from different perspectives in the past decade, so was the reason for Xudong's involvement in the research in this direction. Yet the process was not without difficulties. His previous expertise had been in social psychology before he switched to sociology and anthropology. He needed to adapt to the due changes in methodology from his psychology major to the new one and spend more time in order to grasp the new theories and methods used in the researches in rural society. How to live up to these challenges? How can one manage these in a new research field? These problems constantly emerged on the process of making his decision of the research topic and it was until the second year of his Ph.D. study that we saw significant progress.

Choosing a certain research path means a process of self-reorientation in the academic field, which also demands cooperation with others. When Xudong was searching research topic and methods, the Doctoral Steering Committee talked with him frequently and offered their help and ideas. As a member of the Committee, I also contacted him often. At first, Xudong had indulged in social psychological researches and been attracted by the concepts like "personality", "socialization", and "ideology". But he then needed to master new "vocabularies". How to combine the issues that one was concerned about with the ethnographic fieldwork? After a period of "break-in", we agreed that it might be more feasible to conduct a study on the relationship between village community and institutional transformation from the perspective of anthropology with a focus on the pattern of civil disputes resolution and order maintenance in the process of the legal system construction.

Professor Fei had already discussed rural reconstruction issues in a systematic way in several of his works, such as *From the Soil*, *China's Gentry*, and *The Imperial Power and The Gentry*. In the 1990s, with the reform and institutional readjustment, the issue of rural construction had reappeared in the researches in sociology, economics, law, anthropology, and other disciplines. If Xudong was able to study a specific village, recording and analyzing the co-existence and interaction between tradition and modernity in the process of changes, it would not only enrich our knowledge on these issues and fulfill the academic value, but also allow the chance to form his opinions on how to reform social reality, the object of our studies. During the time when we discussed on the design of this study, Prof. Fei encouraged us to explore the issue courageously and gave great support to Xudong's research plan.

This piece of work is based on Xudong's fieldwork on and off since 1996. Following the guidance of general research practice of social anthropology, Xudong chose one village from Zhao County of Hebei Province to do his fieldwork (according to rules of social anthropology, the village is called the "Li Village"). He lived in the village for over hundreds of days and collected a great amount of materials on the organizations of local civil society, formal and informal authoritative institutions and individuals, economic exchanges, ritual life, and so on. Furthermore, using the literature research method, he searched and read so many court record files on civil disputes resolution. Originally, I suggested that he could focus on the way how the villagers had solved conflicts and their thoughts about "justice", especially on the "civil justice mode" represented in families, economies and rituals. In his fieldwork, Xudong gradually realized that if we focused on the research of civil justice mode, we would not be able to reveal the changes of the rural society in the twentieth century and would not be able to present the complex features he had observed in the fieldwork. He then read Prof. Fei's works and related researches here and abroad. To explain the phenomenon of the co-existence and interaction of many kinds of power and systems at the same time and space, he decided to analyze his materials about the issue of how plural authorities had influenced local social disputes resolution. In this published book, he chose to stick to this view.

Xudong wanted to use the concept of "pluralism of authority" to explain that in traditional rural society, since the state power had not extended to the village, the resolution of civil disputes was generally based on a spontaneous civil logic. This logic could be presented in the events related to private property right relations such as family division. It could also be observed in the process of reciprocal exchanges among villagers. Solving disputes without law was a basic characteristic of "non-litigation" in rural society. Since the end of nineteenth century, with the dissemination of the ideal of nation-state building, a formal and modern system had replaced the traditional one in rural society, which became the main force of social change. From the perspectives of state and upper class in the society, the mainstream meant the modernization of systems. However, from the perspective of general population, modernization meant to add new types of authority to the original system. Xudong considered, in the process of system rebuilding by

modernity, the spontaneous local systems had not been replaced completely. Instead, it had brought plural authorities into village. On one hand, because of legal system building and its popularization in rural area which related to different systems and ideals of nation-state, a new style of disputes resolution had appeared in rural society. On the other hand, those "backward customs", such as rural families, exchanges, and rituals, so defined by advocates and followers of modernity, were still playing their important roles.

In different sections of this book, Xudong has expressed his point of view: the status quo of pluralism of authority can be explained through the reciprocity theory of economic anthropology. In folk tradition, reciprocal exchange had always been in practice. However, with the intervention of state power, an exchange pattern of redistribution was added to rural society, which was to construct a formal right-and-obligation relationship between the nation and community based on power structure.

Some readers may find that Xudong's view has inherited the related concept used in social anthropological researches, but it does not reflect all of his insight. Actually, he is not satisfied with the general idea of social anthropology. He tries to point out that when we examine a community, we need to study it under the new system and focus on the status quo of its replacement, mixture, and co-existence with the old system. This argument is in the same strain with Prof. Fei's reflections on "multiculturalism" in recent years. Xudong's intention is to achieve developments within inheritance. He tries to use traditional ethnographic method to analyze the logic of the existence of plural authorities in rural society. Other anthropologists may prefer to use the perspective of "culture merging" to explain the complex status that Xudong wants to describe. However, the problem is not that simple. The changes appeared in rural China have achieved a historical development in the "vertical" context as well as a structure relationship in the "horizontal" way. Xudong's intention is to express his reflection on rural reconstruction through his description of rural society longitudinally as well as paradigmatically.

In the past 20 years, the rural society has become one of the focuses of China's social science. Scholars of sociology and anthropology have revealed the social changes in rural China in the twentieth century, especially in its later part, by examining the relationship between "small place and big society." Rural economic researches have emphasized the historical changes of rural land property right system. With the implementation of villagers' autonomy, a great amount of exploration about the relations between local community and state has emerged in the field of political science. Legal scholars have also discussed the topic which Xudong studied enthusiastically. Xudong's research topic in this book is closely related to the discussions in other fields. Just like all other anthropologists, Xudong attempts to build up an academic dialogue within the existing academic discussions, through which people will understand that Xudong has not simply accepted the idea of modernity, not simply copied the "cultural grammar" from structural anthropology, not simply accepted the nativists' arguments, nor satisfied with the piling up of academic materials. As the Chinese saying goes, "learning the new by

reviewing the old," this book *Power and Justice* makes comments on these Chinese issues with historical consciousness and significance of innovation.

This is Xudong's first book. There are also problems in it. For instance, the book may be too lengthy and the analyses are not concise enough. Readers may get confused with some narratives. However, as other works, these problems never override its significance. Reading this book, I find the goal of this work is for academic innovation. It is neither like the "classical ethnography" that replaces scholars' "cultural consciousness" with fake "authenticity", nor the radical post-modern anthropological criticism which is proud of its fact-lacking arguments; it neither aims at collecting materials under the guidance of countermeasure research, nor offering suggestions to the present policies. The research focuses on academic analyses of social reality. I appreciate this attitude. It is easy for researchers to construct his "object" for subjective and strategical needs, which betrays the rule that the value of an academic research lies in its contribution to knowledge. Xudong's research in Li Village has provided us with a scene which can widen our horizon and allow us to observe the lives of the people we study. Without such reflection on others' lives, how can anthropological knowledge to be defined as "scientific" or "useful"? In the book, Xudong has expressed his courage to face real life, which presents the anthropologists' will of contributing small but not trivial knowledge to academics. We should fully appreciate this book in following aspects: it has discussed the relations, interactions, and conflicts in daily life and among various institutions in a very specific village, with the relation between the formal and informal legal systems being its main concern. And this concern has been expressed in a village ethnography, which has revealed not only "legal construction issues" but ways of academic construction of social science in concrete fieldwork.

Xudong has asserted in his book that "pluralism of authority" in village community had changed the original social structure and challenged the argument that rural society was self-dependent and autonomous. Meanwhile, he has noticed that the changes in rural society were limited, because the traditional resolving methods still played a main role in civil disputes settlement which limited the penetration and function of new legal system. Although the contradictions between customs and laws could have been discussed repeatedly, Xudong has changed the direction of his discussion consciously, or unconsciously, and devoted himself to a new area with historical significance. In conclusion, he has made a relatively systematic study on the "non-litigation" in rural society, which had been a popular academic term for a long time. For me, "non-litigation" was an ideal for Chinese ancient literati, which symbolized an ethical theory of political order, and was related to the Confucian opinion "emphasizing ethics, ignoring laws." In the first half of twentieth century, "non-litigation" once again had become the new ideal of intellectuals, which was a complicated process of the history of thoughts. In the twentieth century, social scientists in China had made great efforts to look for a social order that could fit in demographic state construction and some of them had chose to rely on Confucianism to support their argument. The effort proved that the growth and officialization of neo-Confucianism had contributed to the implementation of "non-litigation", which had an indelible influence on forming the political ideal of

later Chinese intellectuals. Paradoxically, modern intellectuals could rarely realize that the ideal of "non-litigation" was originated from Confucianism's imagination of civil society. This kind of imagination could not match the close monitoring of modern nation-state, because the modern nation-state emphasized the legal system construction. Why "non-litigation" had appeared constantly in the modern intellectual's argument? One possible explanation was that the modern intellectual's approval for the spontaneous social order was out of their intention to awaken common people's civil right consciousness, as to nation-building, it meant to transplant or translate western "cultural systems" to China.

For Xudong, he needs to rethink about this. It is obviously inadequate to analyze "non-litigation" simply on the basis of theories about nation-state, because there are more important jobs to do, which are to reflect on its ethical and political meanings as well as its manifestation in folk traditions. That is because "non-litigation" cannot fully explain frequent conflicts, disputes, and fights in the countryside. Since the beginning of twentieth century, in the pursuit of modernization, the new-built countries have attempted to construct a new nation by eliminating the fragmented and disunited social facts, namely, by repelling family problems, disputes, and fights among people. This book has also discussed this problem, that is, how the social fragments of traditional Chinese society have become the enemy of modern China. Xudong sees it as a substantive legal right problem, but I would rather believe that it results from the historical change in social ideal, which has shifted from "non-litigation" to using "litigation" to aggregate social fragments. It is impossible to center on this grand question in one book, but I would like to point out that when certain phenomena should be explained by a substantial social change (rather than the theoretical patterns of), one must bear in mind that most ideals cannot turn into fact.

This book has carried an anthropologist's expectation to deconstruct western legal anthropology. Legal anthropology research and political anthropology research are homologous, because both of them are based on the concept of "ordered anarchy". In the nineteenth century, "the ordered anarchy" was first talked about by some classical anthropologists. Into the twentieth century, with the rise of functionalism in social anthropology, discussions about it appeared frequently in anthropologist's writings. At that time, "the ordered anarchy" was mostly equated as "tribal society", making a new epoch of social anthropology.

The "ordered anarchy" was proposed by social anthropologists to reflect the west-approved absolutistic national governance and ruling in modern times, while the political and legal anthropologists who researched non-western tribal societies had provided laboratory for this theoretical reflection. Freedman pointed out that, once the political mode in a tribal society was transplanted in a nation-state, it was inevitable to show the problem of its maladjustment in methodology. This book has further explored this issue, trying to criticize the "tribal society complex" of western political and legal anthropology from the perspective of the authority and disputes resolution. In this respect, Xudong has explored the essence of cross-cultural epistemology. As a kind of discussion, I do not think Xudong would make readers fully accept his judgment, but put forward a worthwhile academic point: the

western anthropology of "tribal society complex" has offered a way to understand the characteristics of the relationship between state and society for the Chinese anthropological researches.

The relationship of Chinese state and society is shown as a "segmentary state", which falls in between the western "authoritarian state" and the "segmentary state" in tribal societies. This type of nation has two sides: on the one hand, the nation seems to exist above society; on the other hand, society, the object of national governance, enjoys degrees of self-government and self-management due to various reasons, like the segmentary social system in African tribes, thus forcing the state to adjust its governing manner according to the segmentary feature of society. It keeps the nation-state swinging between the absolute ruling and alienated supra-local governance. Professor Fei once analyzed the Chinese social structure in the book *China's Gentry* with vivid life history data, and pointed out the Chinese middle class, or gentry, dynamically swang between the state and the community. According to my understanding, the gentry class also symbolizes the pendula characteristic of the "segmentary state". In addition, in the legal field, the traditional Chinese society attaches great importance to criminal law but looks down upon civil law and ignores the private methods of disputes-solving (among communities, families, and individuals). It provides a large space for the common law of tribal society to supervise the communal life and gives probabilities for the operation of folk exchanges. However, it seems the co-existence of nation and "segmentary community" cannot fully explain the connection between them.

Through detailed analysis, Xudong has put forward that not only the formal authority of government, but also the informal folk power has taken effect in the resolving process, which fits the reality of a "segmentary state". However, when it comes to this issue, it is necessary to draw the line between state and tribal society. Even if the Chinese local civil society is close to the "segmentary state" of tribal society, yet, as the academic circles agree, Chinese national strength has existed for thousands of years, which has a profound effect on local society. How to explain the influence of nation on the relatively independent civil authority in the perspective of history and culture? From some sporadic observations, I personally think that the so-called "authority" in civil society is closely connected with the long-lasting "imperial-dominated ideology". Those regarded as "authoritative elites" once played roles in the official state administrative system, and receiving certain official recognition, thus became distinguished from the locals. And the difference in social status leaded to the appearance of "authority". In the other way, those worshiped by villagers as "gods" (another authority) were often named after emperors and imperial officials, and the interactions on some folk ceremonies shared the same procedures with those in imperial court. Those facts remind us that the civil authoritative system is obviously influenced by the traditional mode of national administration and rituals. Some western anthropologists studying folk beliefs of Han think that the civil society has constructed its identity by borrowing symbols from the imperial system. In this cultural borrowing, the imitation of civil society by the imperial system makes the former depend on the latter to some extent. This means that, in the "segmentary state", the construction of community consciousness

in civil society cannot transcend or avert the influence of upper authority. Furthermore, authorities involved in the resolving process of civil disputes may have some colors of the imperial power, and imitate its symbols or representations from the national authority and the legal system. That is to say, besides the autonomous one, authorities accepted by the folk may be also enclosed an expectation for the mandatory system, for villagers also hoping to solve their disputes through the powerful national strength. From this perspective, I cannot fully agree with Xudong, for his idea of using the reciprocal principle to explain the practice of civil disputes.

It is worth pointing out that when western anthropologists wanted to interpret the composition of the "segmentary state" in tribal society, they were faced with an important puzzle: how to explain the widespread chiefdom and kingship? The answer given by them was that chiefs and kings were "divine", who represented the social order, and served as a symbol of the absolute power in the social structure (whatever "social structure" is underlined by Functionalism or stressed in segmentation-conflict theory). The real problem they faced afterward was that those power-related symbols had restrained the tribal thinking mode and the concept of power. More importantly, in united and strong tribal society, the compulsory force was relatively weak while in powerful nation-states, the mandatory power was relatively strong. As a part of cultural sediment, the divine power-related symbols or systems restricted the folk ideology. As a result, when the writing style of tribal society ethnography was applied to the nation-state (or segmentary state), the interaction relation between the processes of the folk community formation and that of the national integration couldn't be ignored. If this is true, then it's inadequate to use simple and pure concepts like "nation" or "folk" to narrate, because the Chinese ethnography must take the complex historical process among the state, the imperial power, and the social order into account.

For convenience, I have quoted the nation-state theory to review the Chinese historical change between nation and society, and I once thought Chinese political changes since modern times can be basically seen as a process that nation-state replaces traditional empire, while modernity substituting tradition. Analyzing history from the perspective of state form would make us concentrate on the changing process promoted by the upper political strength. However, in this process, the power-related symbols that inherited by the folk society apparently have sped up this process. I don't dare to make a conclusion on how this point can enlighten Chinese legal anthropology. But if it is conform to reality, I may suggest that our research must show the farraginous characteristic of combination between the customary law in tribal society and the formal laws in western states, which cannot be simply explained as "plural co-existence", for it contains contradiction, tension, dislocated concepts that must be concerned. The writer has expressed his own points of view on the "pluralism of authority" presented in disputes resolving in Li village, which are also available for our further analysis on this social problem.

Professor Fei Xiaotong once asserted that social science should play a significant role in directing cultural changes, "the need of such knowledge has become more and more urgent in China because the country cannot afford to waste any more of

her wealth and energy in making mistakes" (1939:4). For decades, to understand Fei's words and to clear the relationship between the social science research and social change strategies, most scholars were mainly focusing on the strategy-making, while not giving sufficient attention to the basic information of social science. It makes our study always adopt grand but less meaningful outline to frame the reality, and lets our research lack a full grasp of the relation between researchers and respondents. Professor Fei recently warned us of "the missed lessons." For me, his admonition not only requires us to make deeper studies in the thoughts of predecessor's and others', but also to learn more from the "field", and to pose more questions in fieldwork. Needless to say, this warning has significance in the development of Chinese academia. Based on this, this book can be seen as a milestone achievement in the process of "making up the missed lessons." As for what kind of future this work would lead to, or what kind of "academic school" it might create, it needs nothing but the joint efforts, without being anxious for quick answers.

As the old saying goes, "man proposes, god disposes". Xudong's book reminds me of the proverb that no difficulty is insurmountable if one sets his mind to do it, which I want to share with him at last.

Beijing, China

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Chapter 1
Introduction

As to Chinese public life, it is the judicial system (if it could be called a system) that needs urgent reform …
Sun Yat-Sen (1984, p. 1)

1.1 Origin of the Research

Readers familiar with scholarship on Chinese rural society know that field researches on North China villages are far less than those of South China. In the earlier days, the ethnographic research on North China was conducted by Jinghan (1933) and Gamble (1954) in Ding County of Hebei Province. Later, there came some classical researches about economic history and modern history, such as Ramon Myers' research on the rural economic system and structure (1970), Philip Huang's study on small-scale peasant economy (1985), and Prasenjit Duara's work on the "cultural nexus of power" in North China villages (1988). All the researches mentioned above had more or less used the survey report written by South Manchuria Railway Co. (short for SMR) from 1940 to 1942 as reference, and their focuses were mainly on political and economic systems, rather than on customary law. Based on this point, my research is concentrated on the legal operation in North China countryside, especially on the disputes handling in a rural society.

In 1997, I spent about four months in Li Village[1] on North China Plain (my field location) doing an anthropological fieldwork. After that, I revisited Li Village every year to do a short-term follow-up survey. My fieldwork consisted of four visits. The first one was to know the population size, family economic status, and village temple activities, which lasted for a month. I started asking about previous disputes in the village and their resolving methods during the second visit, and I realized that villagers were more likely to handle disputes behind closed doors, but they would turn to a judicial arbitration or judgment if the dispute couldn't be handled. This

[1]For convenience and to follow anthropological conventions on village research, I used "Li Village" as a fictitious name to replace the village's true name where my research was conducted. This fictitious name was used in all related documents when referring to the village. Villagers' names mentioned in later chapters are all fictitious as well.

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finding pushed me to visit the county court to find court archives of civil cases in the past few decades, and that was my third visit. Those occurred in Li Village between 1948 and 1995 were summed up to 127 cases,[2] among which I paid revisits to 35 cases to know the specific process of case hearing. Through a one-month investigation, I gradually realized that multi-level sides were involved in rural disputes handling, and each side relied on a certain kind of authority. On this basis, I created a term of "pluralism of authority" to depict this phenomenon. The resolving process seemed to having followed similar procedures: first to ask neighbors to negotiate; if it did not work, the Village Mediation Committee would participate in the mediation; if it failed again, the court would be appealed to legal verdict.

My fourth visit was conducted in autumn, and centered on the annual celebration in the village temple, or the temple fair. In this trip, I saw how reciprocity, a principle in gift exchange functioned in religious activities, and then I regarded it as the basic premise for disputes resolving. As I aimed to obtain an understanding of both the life and knowledge in the "small place", and to further interpret the legal concepts and practices through participant observation, I did some case studies and collected some historical archives to know its changes. Besides, I visited past village cadres who were still alive, organized and analyzed several thousand words of village administrative documents (a significant portion of these files was "confessions" that were written by villagers during the Cultural Revolution). With these efforts, I attempted to reconstruct the transition of the power structure in a normal North China village since modern times, and to outline the historical development of disputes resolution.

Certainly, no study on the modern Chinese legal construction can evade the institutional changes since the Hundred Days' Reform (Tang 1984; Feng 1993; Xiao 1997).[3] Political reforms in modern China have made the indigenous legal

[2]Though the court's text materials may be produced by legal experts and cannot reflect the complexity of case hearing process, they can show some basic facts, as well as the agreement or disagreement among judges, plaintiffs and defendants. On this point, Zhao Xiaoli was discerning in arguing the "fabrication" and "unreality" of legal documents. Just as he said, "the legitimacy requirements of the law for case procedure, entities and evidence are finally turned into those for file formulation, because the evidence should be verified in the files at last" (Xiaoli 1997, p. 538). This explanation shows that the court, as the real operating institute of the national law, has its own comprehension on the legal knowledge, and based on which the "reality" of the case is constructed. The criticism on the judicial institute cannot undermine its significance in reality, and the act to fabricate court records just presents the authentic meaning of real life. This is where jurisprudents and anthropologists differ in research perspective. And those criticized by jurisprudents as "unreal" are what anthropologists have interest in. Details of the 127 cases can be seen in the first note of Chap. 5.

[3]The constitutional reform, which strated from the reformism, advocates making changes in economic, political, legal, educational, military and other social systems. As to legal system, it is particularly emphasized that "the laws of Rome, Britain, America, Germany, France and Japan should be adopted, reformed and executed" (Xiaohu 1997, p. 15).

system subjected to the influence of western one (Tongzu 1984; Guofu 1986),[4] and substantially changed the national legal system (Yougen and Zhengmao 1992; Guoqing 1997; Zuowu 1997; Jinfan 1997).[5] It is undeniable that the main purpose of reforms after the Opium Wars was to enrich the country and strengthen its military force.[6] To some extent, it fit the modern nation-state's ideal for development. As to the social turbulences, the government did try to ease them through legislation. However, due to "the internal tension between 'political reform' and 'legislation' throughout the Chinese modern history", it was impossible to get rid of the real contradictions and conflicts (Li 1998, p. 5).[7] The paradox between "political reform" and "rule of law" is not unique to the present Chinese society, but has existed since the early 20th century; in different periods, it highlights different

[4]From Qu Tongzu's retrospective study on the historical development of the law in Qing Dynasty (Tongzu 1984), it's clear that before 1902 (the second year of the rein of Guangxu, an emperor in Qing Dynasty) the Chinese law had been of the same strain since the ancient time. But in 1902, Emperor Guangxu commanded Shen Jiaben and Wu Tingfang to revise the law "according to the present situation, taking reference to laws of all countries as references, and think over to make a draft that could be applicable both at home and abroad" ("Supplement Documents in Qing Dynasty", Vol. 244, *Study of Penalty*), which led to a substantial change in the relatively closed Chinese legal system or legal tradition (Tongzu 1984, pp. 393–394). Reform on the traditional law was achieved by employing Japanese legal experts who had successfully transplanted the Western laws to Japan, allowing them to participate in the Chinese law reform. From the viewpoint of the Japanese legal experts, the Chinese law stuck too much to the feudal ethical codes, which knew little about the Western legal theory, and was an imperfect legal system. The reform aimed to prevent legal practices from "introducing ethics into law". There were also some oppositions: those supporting the traditional law formed the so called "ethical group" (*li pai*), and employed the German He Shanxin to argue for the traditional ethics. But finally the so called "law group" (*fa pai*) defeated the "ethical group" (*li pai*), and converted the traditional Chinese law into one part of the world modern laws (Guilian 1994).

[5]Just as John King Fairbank said, the political reforms from the end of the 19th century to the beginning of the 20th century were implemented and shown on papers. Because the actual measure of the political reform was that the emperor followed the suggestions of the Innovationists, and issued almost 40 breves for modernizing the Chinese social system in exactly one hundred days, among which the legal system was included (1989, p. 125).

[6]Starting from the Westernization Movement (1861–1895), "political reform" has always been linked with "self-strengthening improvement". Just as Li Hongzhang, the chief commander of the movement said, "peaceful relationship with the western countries should be maintained, and domestic political reform should be implemented" ("Replying Renqiu Wang", *Book of Hongzhang Li*, letters among friends and colleagues, Vol. 19), "we have to abandon the land route and adopt the waterway instead, using the western technology to combat foreign states … in order to achieve the goal of self-strengthening improvement." (*Book of Hongzhang Li*, letters among friends and colleagues, Vol. 1, quoted from Tianyu 1993, p. 108).

[7]Feng Tianyu also talked about the antinomy between "variation" and "invariability" in modern times (Tianyu 1993). What should be varied and what should not be varied were strictly defined, and in this way, the nation could be stable. The general argument stipulates the specific contents of "variation" and "invariability" by comparing the advantages and disadvantages between the Western learning and the Chinese learning. Li Hongzhang said that "the Chinese civil and military system far exceeded the Western world, except the firearm." (*The Whole Story of Organizing the Western Business* in Tongzhi period, Vol. 25, quoted from Tianyu 1993, p. 111). Actually, this opinion can be also seen from *The Book of Changes* (Tianyu 1993, pp. 112–114).

points according to the task of political reforms. Specifically, reforms in the late Qing Dynasty stressed the national economic prosperity, so as to "use foreigners to subdue foreigners". Later in the early Republican period, the attitude of actively learning the west gradually turned into an inferior social mentality, which called people to save the state by abolishing the so-called "bad habits" (Xisuo 1998).

In modern times, the state pushes hardest for a "state-led modernization" development mode, partly to legitimatize its power, and to eliminate the social disorder during the construction of market economy system (He 1996, pp. 10–13). Namely, in order to enhance efficiency in decision-making and to keep social order, the state tries to realize the national legal goal of "ruling by law" through constructing a set of legal systems that fits its economy system (Zhang et al. 1991; Chen 1994; Lubman 1995; Liu and Li 1998). But the problem is, if the state formulates laws in terms of the above ideas, it would ignore the indigenous social order and make the legal provisions lack of practical effects,[8] which makes the society "have more laws but less order" (Ellickson 1991, p. 286; quoted from Suli 1998, Li 1998, p. 3).[9]

Though the modern mainstream constitutional idea "no national law, no social order"—has almost become a common sense, it does not mean what the ideal represents has come true. In fact, the contradiction between the subjectivity of the state law and the objectivity of the conventions has existed for a long time. Perhaps it is this contradiction that has aroused heated debate on the westernization or localization of law in Chinese legal profession. Since the 1980s, considering that the market economy system originated from the west,[10] some theorists have proposed to base the Chinese legal system under market economy on the western one

[8]Fang Tenggao once made reflective summary on the Chinese economic legislation from 1979 to 1992. According to his rough statistics, during 14 years, 434 economic laws and regulations were formulated by the nation, and more than 700 laws and regulations were formulated by the local People's Congress, which were far more than the total economic laws that had been legislated in the past 30 years. However, the effect was just like the "bottle-neck phenomenon", "the number and scale of the economic legislation has increased and expanded sharply, but its consequent benefits don't keep pace with them; on the contrary, the phenomena of "failure to abide by laws" and "failure to strictly enforce laws" were prominent (Tenggao 1994, p. 24).

[9]People who have a basic understanding of the actual legal operation would not equate the conceptual emphasis on westernization to the actual operation, for Chinese modernization is not completely a copy of West, whose propaganda for modernization just remains on publicity and slogans. The real situation is just like what Ke Lanjun summarized, "on one hand, the western-style democracy basically makes no progress; on the other hand, the traditional behavior pattern and the Confucian values are re-accepted, propagandized and emphasized again by the official along with the continuous opening of the economy, and are gradually infused into all aspects of the Chinese society" (Lanjun 1996, p. 179). It is dubious whether the official admits the traditional values or not and at what level are the values admitted, but it is convinced that any foreign idea would be re-explained and transformed by the local culture, with the legal modernization being of no exception.

[10]Actually, studies in law history have indicated that the Western modern law didn't exist since the ancient time, but developed gradually along with the growth of European capitalism (Tigar and Levy 1996).

(Zhong 1993; Zhao 1993; Wang 1993; Gan 1993),[11] or at least transplant the western "procedural justice" into the Chinese legal practice (Ji 1993; Weidong 1993). In short, the goal is to realize social justice through judicial proceedings (He 1998; WeiFanzhuangg 1998). Some other researchers have paid attention to the differences between ideal and reality, more emphasis on the legal meaning of folk cultural practice that are different from the formal law, and advocated to construct Chinese legal system on the basis of "local resources" (Li 1994, 1996, p. 14).

To explore the legal concept and practice in a village community, one would face the contradictory situations emerged in the modern legal changes. These controversies need more scholars to analyze, especially from different perspectives and disciplines. Here I want to provide some valuable cases for further discussion, and to express my viewpoints on the theoretical controversy mentioned above. According to the academic classification of social anthropology, my study should be defined as a specialized research on "legal anthropology". Surely certain scholars have studied legal concepts and practices in rural China from various angles, but none has ever adopted legal anthropology tradition for the study, in a sense, this academic tradition has offered me a focus for my research and enabled me to conduct my analysis.

1.2 Legal Pluralism

In the western academic tradition, legal anthropology, as a sub-field of social anthropology, has been evolving according to scholars' changeable views of law. At the inception, legal anthropology is mainly premised on evolutionism. To some extent, we may say it originates from the concept of "primitive law", and one of the reasons for anthropologists to study the primitive tribes' laws is to generalize its "traditionalism" and to contrast them to modern laws (Roberts 1994). In this regard, Maine's academic contribution is remarkable. On the basis of analyzing ancient

[11]The opinion that Chinese legal system should be reformed with reference to the western legal system was firstly claimed by Sun Yat-sen, who targeted at the legal system of Qing regime to overthrow feudalism. Sun once wrote an article titled "Judicial Reform of China" after Great Britain suffered disaster. The article was published on the English magazine *East Asia* in July, 1897 in the name of Sun and his co-writer Collins. But it did not attract the attention of historians, and thus the article was not included in *The Complete Works of Sun Yat-sen*. Until 1980s, this article was found by a Japanese scholar Nakamura Tadashi, through Yu Xia's translation, it was gradually known by the Chinese, and circulated in the Chinese-spoken regions. In this short article, Sun gave a great number of cases to verify how the legal system of Qing regime corrupted at that time, and eagerly proposed that the western legal system should be implanted in China. At the end of the article, it read "the Chinese bureaucracy treated the common people as dirt, for whom killing a person was as easy as killing a thousand ants … . The Chinese law sullies the world created by God and insults the common humanity. If Great Britain could understand this point, the young Reform Party (*Gexindang*) can be expected to introduce the European judicial system into China, or at least not hindering this process" (Yat-sen 1984, p. 10).

laws and tribal society customs, he regards law as a more advanced stage than religion and morality in cultural evolution (1861, 1883).

Half disagreed with Maine's argument, Diamond (1935) revised Maine's legal evolutionary model and reordered the evolutionary sequence as morality, religion and law, but this revision didn't pose a real challenge to the evolutionary paradigm. It was Malinowski's and Radcliffe-Brown's opinions,[12] which stressed the self-operation of social orderthat dismantled Maine's evolutionary argument. Later, Evans-Pritchard (1940), a key figure in the Oxford school,[13] raised a core question in political and legal anthropology, that was, how to achieve order in a society with no central authority?

To answer this question, ethnographies must be explored, for they could provide the cultural insight of order through close observation. First, Malinowski's study on Trobriand Islands tribes (1926) found that the reciprocity restrains every member of the society and sustains the social order, if one "gives", the recipient must return something to the giver. While Radcliffe-Brown's study on the Andamanese (1922) underlined the significance of rules, and took "rule-centered" society as an essential element of order-keeping. As to order-keeping in stateless societies, Malinowski answered it from psychological needs, while Radcliffe-Brown explained it from social structure.

In fact, laws in tribal societies,[14] order-keeping and customs in stateless societies have always been the central issues of social anthropology (Xudong 1999). But the existing theories have put more emphasis on the tribal societies that have no central power (Hoebel 1954; Gluckman 1956, 1965) and the question is, how to apply theories or methods summarized from tribal societies in those having central power since long ago, such as Chinese society?

The recent scholarship in legal anthropology has shifted its focus from how to ensure social order to disputes settling (Starr and Collier 1989; Roberts 1994). This shift would offer us more individual cases and let us see how the nation-state and civil society come into play in a specific case. In addition, it has made social

[12]Radcliffe-Brown, hereinafter in short for Brown.

[13]In all fairness, the Oxford Group led by Brown is opposite to the Functionalism led by Malinowski, the former focuses more on theory and its validity, with Evans-Pritchard and Fortes being the two most noticeable figures at that time. For the history of the Oxford Group, the monograph by Goody can be referred to (1995, pp. 77–86).

[14]The French social anthropologist Maurice Godelier, who supported the Marx theory, once made a special discussion on "tribe". He did not agree that the concept of "tribe" was derived from Social Evolutionism, and asserted that history was not developed lineally, and the present was just the result of world evolution. Moreover, anthropological opinion that the tribal society was a "non-state society" needed to be reconsidered. Besides, once "tribal society" was converted to be an "ideological concept", it would affect our real expression, and our understanding about the developing direction of the third world. Godelier (1977) here the writer has no intention to search for a corresponding "tribal society" in China, but to admit that order could be kept well without the control of nation. Therefore, a comparative research should be made to explore a more sophisticated mechanism keeping social order in Chinese rural society. That's why the western scholars' previous researches on the tribal society are reviewed first.

anthropologists pay more attention to the interactions between the formal legal systems and the customary conventions in dispute-resolving.

Another reason is that since the colonial suzerains forcibly established the western legal systems in colonial societies after the Second World War, conflicts between western concepts and native conventions have frequently occured. Chen Yilin's research (1986) on the conflicts between local customs of land system in New Territories of Hong Kong and colonial British land legislation showed that, although British colonists respected the local land conventions and took enough consideration in law-making, there existed ideological differences in the legal operation, which in turn had adverse implications. For instance, the colonial authority didn't accredit a lineage's communal property, but designated *lisi*, a representative of the lineage, as the legal representative of the property. Such legal provisions failed to handle the civil disputes, such as "two owners sharing the same piece of farmland", and always disrupted people's approval of local customs. Just as Chen said:

> … Traditional land issues are governed by clear rules, and function as laws. As these rules are accepted and supported by most people in the society, there's no problem in its operation. In contrast, laws set by colonial authority are not easy to be accepted as native customs, nor could they keep social justice. The real conflicts between legal system and traditional customs prove that they are totally different both on the surface and in the blood. (1986, pp. 13–14)

It can be seen, if government enacted laws according to local customs, those conflicts may disappear, while for the overall objective of modernization, specious legal provisions that seem to follow international practice are always formulated. What should be noted is laws made in this way may be far away from the local life, and go beyond people's understanding.

Field research on such conflicts allows legal anthropologists to rethink the western legal tradition, after introspection, they finally give up using Darwinian's terms like "advanced" or "backward" to judge the traditional customs of each colonial society, and take "legal pluralism" as the basic perspective to overcome "law-centrism", a prejudice criticized by Malinowski more than once.

In a sense, laws are special rules in certain spaces and time (Roberts 1994, p. 979), and are made during the long-lasting interaction between local customs in a small place and rules, policies as well as national laws of the whole society (Bohannan 1989). If this interaction is narrowed down to disputes-handling, it must be a dynamic process that involves several principles, and implies the process of "legal pluralism" (Fitzpatrick 1983). Following this thought, a civil dispute settling reveals multiple influences of national laws and other authorities, such perspective is a new direction for the present legal anthropology, with most anthropologists failing to pay due attention.[15]

[15]For example, the research made by Taiwanese scholar Shi Lei, which focused on Paiwan people's methods of resolving familial disputes in Taiwan (Lei 1971), just remained on the single dimension of summarizing the civil rules, and ignored the influence of the foreign state or administrative officials in disputes resolution.

Thence the research object of legal anthropologists shifts to analyzing how different types of rules coexist within a society, which is a change of research approach caused by "legal pluralism". It makes us clearly realize that "laws are broadly defined to contain normative rules that supported by the state and various local rules, therefore many societies have multiple rules" (Zhu 1997, p. 575). This argument denies the idea of constructing social norms merely by national laws.

Shifts in the research paradigm of legal anthropology are instructive for Chinese modern legal research. In traditional periods, China has centralized state power and national laws, under its influence, local customs play the same role of law in disciplining people's behavior. Historiographer Yang Guozhen's research on contracts in Ming and Qing dynasties (1981, 1988, 1990, 1994), together with legal historiographer Liang Zhiping's study on the customary law of Qing Dynasty (1996a), suffice to prove the point above. Nobody can deny the fact that in China, a dispute would not be handed to the court directly, before that, it is always mediated by conventions, even if it is handled by laws, local customs still play an active role in its resolution.

Under this background, experts that notice the influence of local culture on legal operation would share the topic with anthropologists who concentrate on the function of local laws, as their common interest is how conventions work in local societies.

1.3 Community-Based Research Method

"Legal pluralism" is the basic perspective of this research, as it doesn't contradict the idea of fieldwork research, I adopt community research method and take village as a unit. Some experts may think academic discussions cannot be limited in local problems when it comes to the analysis of disputes settling and order keeping between the nation-state and the civil society, but in my opinion, a small-scale community allows us to know the exact legal practices, and vividly reveals how multiple rules function.

Social anthropologist's fieldwork is like dissecting a sparrow, it is a micro analysis, and also a concrete manifestation of cultural holism. In anthropologists' view, society is a web, and each social problem must be discussed within it. As to rural dispute, its occurrence and resolution are linked with local systems, such as marriage customs, clan force, local court, rural government and religious activities. For instance, if gift exchange in rural societies is to be examined, goods that they live on, the value of these goods and the flow of them among persons should all be taken into account, as well as village authority, power structure and symbolic system. This is the essence of the "micro-sociological" study advocated by Firth,[16]

[16]Fei Xiaotong translated the English word "micro-sociological" proposed by Firth in 1938 into "显微式的社会研究". Later in 1996, Fei wrote the article "Rereading Jiang village economy, the

and he further explains it as follows, just after positively remarking on Chinese scholars' studies in rural credit system in 1930s (1938, p. 251):

> The rural credit system shows kinship and friendship are ways to realize mutual economic assistance, and the economic exchange is not totally commercial, but is influenced by other social factors. Since debts are not used as capital for reproduction, but for food, marriage or funeral in most cases, we can reconsider whether the creditors can achieve non-economic remuneration, and when kinship or friendship can be the basis of credit. To know these, we must analyze the local marriage and funeral system, moral pressure related with friendship, people's understanding about reciprocity, as well as a variety of sanctions to ensure repayment. Here, we can't but adopt a micro-sociological method, so as to investigate the private relationship in various social situations, as well as different people's actual behaviors.

That is to say, the micro-sociological study enables the researcher to be integrated into a small society, to live the local life, to observe the society as an interrelated whole, and to write the life of the locals (Malinowski 1922).[17]

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preface" (1996), in which he re-translated Firth's term to "微型社会学". Though there is difference in the Chinese version of this term, the original English word is "micro-sociological".

[17]The Function Theory of anthropology focuses on the analysis of correlation among factors affecting the community life. For example, the ancestral temples in the rural South are used for worshiping ancestors, but the actual functions are far more than that. Just as Lin Yaohua said, "it is known that the ancestral temple was originally built to offer sacrifice, worship ancestors, and show gratefulness to the elders. While as time passes, its functions are not limited to religious field any more. For example, during festival tournaments, people would get together in the temple to welcome gods, to perform local operas, thus the ancestral temples have to be converted to places for communicating with clansmen. In the early Qing Dynasty, if the young passed the provincial civil service examination, they must come to the ancestral temples to worship and praise the virtues of ancestors. Even now the private schools must be attached to ancestral temples, with *Shushi* teaching and students learning, the ancestral temples change into an educational institute of the clansman. At the beginning, clan leaders represented the corresponding branch in the worship ceremony, which made the clan as loose as an unorganized unit; latter, due to the development of relationship between the clan and government, and between the clan and the adjacent clan, clan leaders had to communicate with officials and nearby leaders in the ancestral temples, which made it change into a diplomatic space. Furthermore, as a result of population increase, clan leaders had to resolve issues like disputes, fights, dispossession, adultery, gambling, and so on by persuading, advising, appealing or punishing in temples. So it became the inner court or internal governing mechanism of the clan, with matters like tax-distributing, donation-collecting, ancestral property managing, conducting rescue and opening granary discussed and decided in the ancestral temple, so it turned into an economic mechanism for financial stuff. To avoid thieves, robbers and enemies, the clansmen organized soldier associations for joint defense, and they all gathered in the ancestral temple, so it was also a military camp for soldiers. Such examples were too numerous to mention one by one. In a word, the clans had numerous affairs. With the increase in the functions of ancestral temple, the role played by clan leader became more important, and his power got expanded" (Yaohua 1936, pp. 130–131). So when we go to the countryside to do on-site inspection, you will find other things also associated with it. Ancestral temple can be the starting point of research. Then why other issues such as temple fair, elementary school, village government cannot be the starting point of research? What we want to stress is to see the mutual relationship between various factors. This is perhaps the essence of microcosmic research, of course, is also its charm.

In this research, the"micro-sociology"is used as the research perspective, with a small and graspable village as the research unit. Such unit is in fact "a small community" (Redfield 1956). In Chinese society, a micro-level fieldwork should be a detailed study on a particular village, (Radcliffe-Brown 1936), concerning how a certain aspect of village community functions in the social life, and the structural formation of the village. Fieldworks like Fei Xiaotong's investigation in Kaihsienkung Village, Jiangsu Province (1939), Lin Yaohua's survey in Yixu Village, Fujian Province (1935), and Yang Maochun's study in Taitou Village, Shandong Province (1945) are all premised on the above thought.

Villages like Kaihsienkung Village, Yixu Village, Taitou Village or Li Village are numerous in China, but how can a small village represent the specific conditions of other tens of thousands villages? Leach (1982) asked the rural Chinese micro-sociological experts about this methodological question (Xiaotong 1996). Later, the microscopic research that advocated by Firth, an early social anthropologist, encountered more criticism, which made more Chinese rural experts give up village studies and rethink the nature of Chinese society from a macro level, such as the social-historical angle. For example, the "lineage" paradigm posed by Maurice Freedman attempted to create "a new era" for sinology anthropological research (Freedman 1966), in order to clear obstacles that prevent the micro social anthropology from coping with the macro historical studies (Xudong 1998). While considering the idea of "a small place, the representative of a large society" proposed by Chinese anthropologists recently, during the nation-state's development, it's found that Chinese villages are constantly intertwined with or penetrated by the state power (Mingming 1997a). In other words, one can still feel the working mechanism of the state power in small places, such as a village. This thought reminds researchers to concern the limited region of a village, and analyze the interaction between the state power and civil life through meticulous observation.

During the four-month long investigation, I have observed and lived a life that unfamiliar to me. Left the field notes, these experiences would come to my mind clearly that I can still feel it, gradually becoming a part of "supporting consciousness" that helps me to rethink some theoretical issues (Polanyi 1964; Cezong 1996). It should be noted that there are at least two factors sparking my interest in rural society. One is to verify the rural foundation of local societies in theory. Fei Xiaotong once argued that "Chinese society is fundamentally rural" in his book *From the Soil: The Foundations of Chinese Society* (1992, p. 37). In his opinion, "the basic unit of Chinese rural society is the village" (1992, p. 41), immobility of population and familiarity within the community are two distinctive characteristics of rural society. Though this argument was proposed more than 50 years ago, and underwent both institutional and structural changes in countryside, it is still very enlightening for Chinese rural society.

In the present academia, the point that "village is the unit of rural community" has been converted to "whether village constitutes a basic research unit for social anthropology". As to this question, American anthropologist William Skinner has given his answer through the standard market theory. Skinner (1964–1965) in his view, the basic unit of rural society is township market, rather than village, because

people live there and develop various activities. Nevertheless, the subsequent analysis of this theory shows, it's ill-founded to regard a township market as the basis of rural China (Yinghua 1993). Criticism of the standard market theory is mostly from Philip Huang, who has reanalyzed the Japanese SMR survey in North China countryside in the 1940s, and argued that village can be a research unit at least in North China (1985, pp. 220–224). This conclusion once again has verified Radcliffe-Brown's viewpoint in the mid-1930s, at that time, Radcliffe-Brown visited Yenching University, made a lecture on the research orientation of Chinese sociology, and clearly differentiated "social survey" and "sociological survey". As to him, "social survey" is a life record of a group of people, in contrast, "sociological survey" is to verify or falsify certain theory or assumption by investigating social facts (1936, p. 79). Following this methodological thought, village at the micro level can be the field for sociological study, as certain theory or assumption would be remained as hypothesis without the observation of it. Therefore, Radcliffe-Brown has introduced village as the most suitable research unit for Chinese sociology, either because it embraces the majority of Chinese population, or because it is graspable for experts to conduct research (1936, pp. 81–82).

If a village community's openness and autonomy are ignored in the investigation, the following studies are likely to be limited in a narrow or even extreme perspective. How to transcend the above methodological limits and combine the best of micro and macro perspectives is an issue faced by present social anthropologists. In this respect, Wang Mingming sees the history of a community as a narrative framework, which represents a shift in social anthropology paradigm (Xudong 1997). Overcoming the disadvantages of the above two studies, this method allows community research to "reveal its unique characteristics, as well as some general features of a complex society" (Mingming 1997b, p. 15).[18] It is assumed that from a historical viewpoint, what a village underwent synchronizes with a modern state's goal of development. Therefore, narration of a village community's history shows the penetration of the state power into the rural society, namely, even a "small" rural society is under the influence of a "large" state. As a result, this study adopts the argument above, and takes community history as the narrative framework.

1.4 Structure of the Book

As to its structure, this book consists of ten chapters, first is Introduction and final is Conclusion, with all discussed legal pluralism by different ethnographical materials. Chapter 2 is about the background of Li Village, including geographical conditions, population size, economic life, as well as the interdependence between people and

[18]In the historical description on the development of the familial community in Xi Village of Fujian Province, Wang Mingming first introduced Giddens' theory (Giddens 1985) about nation-state (Mingming 1997b, pp. 10–13).

pear. The pear-tree planting and pear saling constitute the core of local life, and the economic benefits brought by pears are closely connected with people's joys and sorrows.

Chapters 3–5 is the body part, broadening the investigation of local disputes and corresponding resolving methods in the past 50 years. Chapter 3 talks about the disputes arosed by family division, and reveals the contradiction, infiltration and integration between laws and conventions of family maintenance. Chapter 4 investigates the resolving process of marital conflicts as well as the mediating logic. If "family-division" is cell reproduction, "divorce" should be cell division, for it separates a couple and dismantles a family. Thanks to certain legal archives, interaction between laws and customs can be vividly shown.

Chapter 5 tells of the rural gift-exchange, or reciprocal system in rural China. In my opinion, it's the exchange of gifts that governs the social relations, which is essentially a kind of reciprocal relation. Whoever intentionally offends reciprocity would be accused, and those abiding it are believed to do justice. Since the state power begins to penetrate into rural society in modern times, villagers would like to use the indigenous "reciprocal logic" to cope with the state power, while such reciprocity is ostensible, for several forces are involved in the resource allocation and always interrupt its balance, especially in the aspect of national tax-collection, inequality between state and villagers always emerges.

Chapter 6 is about temple ceremonies, which attempts to display how religious authority, as a type of legal pluralism, works in a village. In a sense, a ruined temple can be reconstructed with the help of psychics that have mysterious knowledge or own the ability to speak with spirits. With these temples, villages can be united through religious activities, such as a donation-like ritual, which transcends regional boundaries and puts gods of different villages together, and shows the basic rule of reciprocity in interpersonal relation maintenance. Besides, "incense-viewing" ritual, a local ordeal of disputes resolution, could clear individual's respective responsibilities and reach a consensus on the dispute. In the end of this ritual, the incense viewer will tell the two parties of the God's will, and try to mediate this dispute. To some extent, it is more like a psychological therapy, because the psychic intends to change one party's long-held beliefs and behaviors in reality. In addition, the Incense Atlas for incense-viewing reflects the local's outlook on world, their understanding and pursuit for order. In brief, the local knowledge of "order" and "disorder" can be seen in religious activities.

Chapter 7 introduces how the modern nation-state penetrates, extends and consolidates its power in a village. Certain village archives, historical data are collected, and the elders are interviewed to trace the past, especially the transition of power structure from the Japanese occupation in 1930s to the implementation of Household Contract Responsibility System in 1980s. This period is very special, for it witnesses the rapid development of the state, and the state power penetration in the countryside.

Chapter 8 describes the private mode of production and its influence on contractual relation after Chinese rural reforms since the 1980s. The new economic mode of production and rural authority relationship result in a pluralistic structure

of authority in the village. It includes institutionalized state authority and non-institutionalized civil authority, cooperating and competing with each other. Its complex interaction is demonstrated in specific cases. The court proceedings cited in this chapter show exactly that institutional authority of the court, together with folk conventions and non-institutionalized force, are intertwined and jointly contribute to the dispute-handling.

Chapter 9 is concerned about the "operating characteristics" of Chinese folk authority, through reanalyzing the existing concepts like "non-litigation", "governing of civil elites", and "differential patterns". Based on this, the "justice of differential modes" is proposed as a new term to reveal how justice is measured by a villager's "closeness" with the other, in this sense, universal justice is only a social ideal since the western enlightenment. As a result, the contradictions or tensions between law and custom form a paradox that needs to be exceeded in legal practices.

The concluding chapter summarizes the power relation in rural societies, and explores its formation, nature and influence. Questions like the universality and locality of legal knowledge, relation between the state and the folk will be discussed, so as to deconstruct the "modernity" of Chinese legal construction supported by previous experts. In Chinese rural society, the most important way is probably the most convenient approach to resolve conflicts. Namely, methods for disputes settling must be efficient in practice, rather than in theory. Moreover, through comparing the government's comprehension of happiness and the folk's, this book shows how "liberated politics" has changed the latter, which is the precondition of the rural political and legal system's development under the "legal pluralism".

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Chapter 2
Li Village

In respect of real life, community includes at least three elements, people, their living region, and their local lifestyle, or culture.

Wu (1936: VI)

2.1 Space of Li Village

Li Village is located in Zhao County of Hebei Province, 50 km southeast of the provincial capital Shijiazhuang, nearly an hour's drive between them. Zhao County, called Zhao Prefecture or Zhaozhou[1] in the past, now belongs to Shijiazhuang. It is an old county with a history of more than 2500 years, and is famous as a thoroughfare from south to north. In *Zhaozhou Annals* of Qing Dynasty, it reads "Zhao, a historically great state, is surrounded by mountains and rivers, and has the best scenery. It has been a significant channel to connect South and North since Yuan Dynasty. Then, after Ming Emperor Yongle made Beiping the capital, it has

[1]In 1897, *Zhaozhou Annals* had given a brief summary of the name of Zhao County and its geography. And the following is the excerpt: "'Zhao County' was named after Zaofu, who was granted with the land Geng, Chengzi lived in Yuan, and Jianzi occupied the Jinyang. Xianhou governed the Zhongmou, and Jingwu governed the Handan. In the beginning of the Han Dynasty, the Zhao County was a kingdom, and Xiangju (not the Xiangju today) was selected as the capital. The kingdom of Zhao in the period of the Warring States was very large in territory and powerful enough to fight against the kingdom of Qin. The territory of the kingdom of Zhao stretched for thousands of miles. Was it reasonable that Jipu, a small place, represented the name of the whole kingdom of Zhao? However, since Dianwu defeated the Ji and established a country, the Tuoba family had changed the country into a county. Later, the Zhao County was moved and divided, which was kept till today. The territory of the kingdom of Zhao reached Qing and Qi in the East, Bing and Fen in the West, the Huaihe River in the South and the Liao and Ji in the North. Generally, famous and large counties are strategic military. The plain lands of Zhao Kingdom extended in the suburb, with no steep mountains, so that the pass was guarded to protect against foreign invasions. As the kingdom of Zhao was a place of strategic importance, wars happened continuously here. In Yuan Dynasty, Yanjing was selected as the capital. Then the capital was moved to Beiping in the Yongle period of the Ming Dynasty, and the kingdom of Zhao was named as Gugong County." (Chorography Compilation Committee of Zhao County 1985: 31).

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become a thoroughfare that links nine provinces in central plains." (Chorography Compilation Committee of Zhao County in Hebei Province 1985). It is said that before the construction of Beijing-Guangzhou railway, people who went north to south or south to north must pass Zhao County, but after the completion of the railway, its role as traffic fort began to recede.

Zhao County is perched on the flood plains of the eastern Taihang Mountains, 114.36–115.4 degrees east longitude and 37.37–37.53 degrees north latitude. Its terrain is open and flat, and lies tilted from west to east. Many fossil river courses run through it, producing the pluvial alluvial plain that embraces down-land and low-lying land. The western altitude is 46.6 m while the eastern is 33.9 m, so the west is almost 127 m higher than the east. And its surface slope is about 1/1500 to 1/2500. This county covers a vast territory and comprises 11 towns. It starts from Kangjia Village of Beiwangli Town in west, and ends in Dafuzhuang Town in east, crossing 44 km; south rises from Yejipu Village in Shahedian Town, north to Fengjiazhuang Village of Qiandazhang Town, 30-km wide, whose area is nearly 765 km^2. It borders upon Yuanshi County in west, Boxiang County in South, Gaocheng City in North, Luancheng County in northwest, Gaoyi County in southwest, Ningjin County in southeast (Chorography Compilation Committee of Zhao County in Hebei Province 1993: 48–77).

Human Geographer Hu Huanyong classifies the population density of China into eight levels, and Zhao County is at the second level (Hu 1935). It's said that the population density of this level is about 300 people per km^2, while the present number of Zhao County has been doubled. For instance, the average population density in 1922 was 329, which agreed with Hu's estimation, but it increased to 660 in 1986 (Chorography Compilation Committee of Zhao County in Hebei Province 1993: 90).

Lying in a warm temperate semi-humid climate zone, Zhao County is characterized by the eastern monsoon climate, whose spring and autumn are shorter while summer and winter last long (Chorography Compilation Committee of Zhao County in Hebei Province 1985: 60). It is cold and sometimes snows in early spring, but becomes sunny in mid-spring, with decreased rainfall, rebounded temperature, and warm south breeze. In summer, it's extremely hot, rainfall increases and flood disasters often occur in late period. In contrast, autumn is a season for harvest, with clear sky, dry air, and pleasant climate. Winter is a God-given time for rest, though it's cold and windy. The senior administrative unit above Li Village is Fanzhuang Town, 19 km east of Zhao County. It is bounded on Da'an Town in east, Nanbaishe Town in west, Yanghu Town in south, Xiezhuang Town in north, Gedatou Town in northwest (Fig. 2.1).

The township government resides in Fanzhuang Village, where holds fairs on every five days, like January the fifth, tenth, fifteenth, twentieth, twenty-fifth and thirtieth. During these days, people within 15 or even 20 km would make trade at the fair. To some extent, Fanzhuang Village serves as a "standard market" that offers ready services to the locals (Skinner 1964–1965). With the improvement of traffic roads and the advancement in transport means, the opinion that the "standard market" is a center for exchanging, collecting and distributing products should be modified, for some villages like Li Village has replaced the role of town in agricultural products trading.

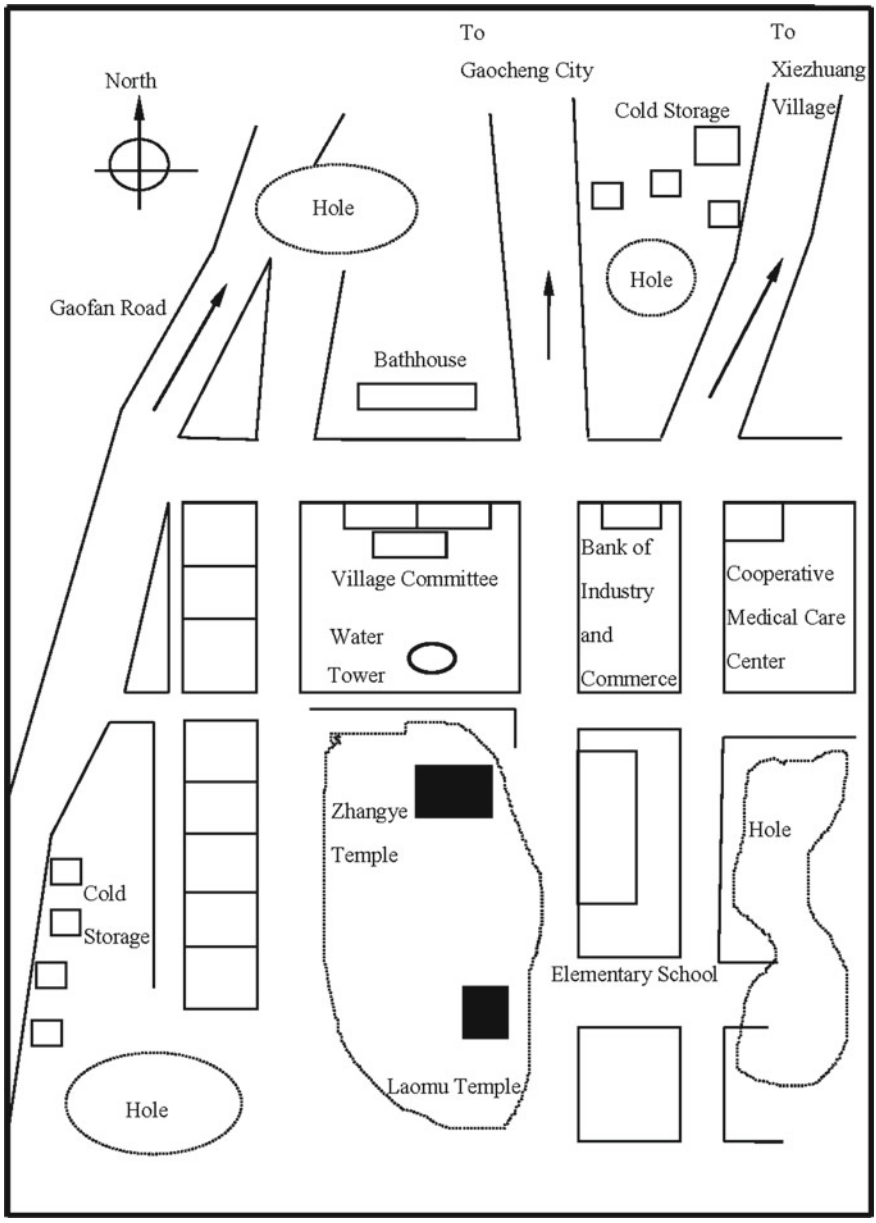

Fig. 2.1 Village layout

Fanzhuang Town is a transportation hub of the east part of Zhao County, and the only way to the eastern pear zone. Situated in the old Hutuo River course, it is flat and rich in sandy loamy brown soil, benefiting the plantation of pears, grain and cotton. The total farmland is 28,128 mu, and every part is irrigable. Land for fruit trees accounts for 13,105 mu, among which 11,777 mu are pear trees, especially Snow Pear trees. The township government administers nine villages, about 4,265 families, totally 18,624 people.

As noticed by previous observers, rural households in North China are distributed close to each other. In the 1930s, several densely-distributed households could form a village community (Nagano 1931). But nowadays, influenced by the population growth, a village in North China generally consists of hundreds of households, namely thousands of people. Nevertheless, Nagano Akira's idea about the high density of village distribution is always right, because there is a village every two or three kilometers.

Three kilometers north of Fanzhuang Village, Li Village takes the shape of rectangle, occupies 7,301 mu in total, with 754 mu being used as residence. Several straight aisles (*guodao* in dialect) go through it, and an 800-m long, 12-m wide main street stretches in east-west direction.

Architects usually classify Chinese residence into four kinds according to the geographical location: North and Northeast China zone, Jinyu Shanbei cave dwelling area, Jiangnan area and Yunnan area (Liang 1998: 324–327). The housing structure in Li Village fits characteristics in North and Northeast China zone, for its houses head in north-south direction, and one courtyard adjoins another. One family shares a confined housing space, which is enclosed by high walls to separate from the other. Most houses are made of bricks, cement and wood. In general, one house has some south-faced principal rooms, a courtyard and some wing-rooms situated between the yard and aisle. At the front gate, there is a grand door, almost 5 m high and 3 m wide on average, with auspicious words like "longevity and health" (*fushou ankang*), "dragon and phoenix bring prosperity" (*longfeng chengxiang*) hanging at the top. On the opposite side of the door was a screen-wall (*yingbi*), which is painted white by ordinary family, and decorated with Chinese landscape in those wealthy. At the foot of the screen-wall, almost every family enshrines a portrait or a clay figure of the *Tudiye* (God of Land).

At the root of the north wall lies a shrine to worship *Tiandi* (Heaven and Earth), whose paper portraits would be burned in lunar January 16th to bless the whole family safe and sound. *Zaowangye* (God of Kitchen) enjoys more popularity, which is always painted together with *Zaowang nainai* (Goddess of Kitchen, the wife of *Zaowangye*). In local eyes, this old couple are hearth-lived patron saints, who can fly into the heaven to say good words for them and come back to bless the whole family. Their portrait has two kinds, which differs in the position of dog and chicken at their feet, one posits chicken right and dog left while the other is the opposite, but either of them is believed to be auspicious. The alternatives allow people to put it at a suitable position in terms of the bed location, thereby ensuring "dog cannot bite the bed, while chicken should run to the bed".

The number of rooms must be odd, and the common set is five principal rooms plus three wing-rooms. As to locals, beam and wall are taken as division basis for rooms, which separate a space into two rooms. As shown in Fig. 2.2, in which a full line represents a wall while a dotted line means a beam, the family has seven principal rooms in total. The middle three principal rooms serve as parlor and bedrooms, in which lies the householder's bed. And children would live in those near the central three rooms. If relatives or guests visit, they would live on the other side of the principal room. Into the parlor, the picture of gods (*Shen'an*) is put in the middle of the wall, under which is an elongated altar, with incense burner and offerings on it. In front of the altar is a square table, with a wooden round-backed armchair on each side.

Courtyards are built next to each other, which are separated by a wall. Against the wall are cellar, pigpen and toilet. Neighbors living in anterior and posterior adjacently yards take the back wall of principal rooms as boundary, so if the householder in the front yard plans to build the second floor, he must retract the back wall by one meter, so as to avoid blocking the rear yard's daylighting.

Apart from the potential contradiction between front and rear yards, the rural housing disputes are always about geomancy (*fengshui*). Chinese geomancy is a core concern not only for geographers (Liu 1995), but also for anthropologists who

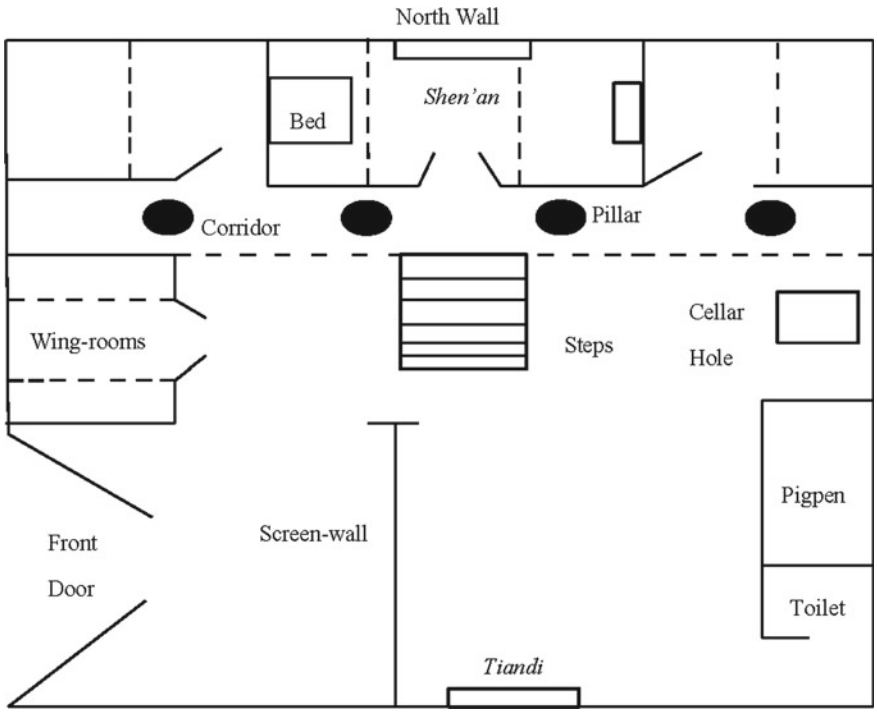

Fig. 2.2 Arrangement of residential space

see it as a set of explanatory rules for people's living space (Feuchtwang 1974; Wang 1997), or a direct manifestation of local people's worldview (Wang 1994, 1995; Yoshio 1997). While for Li Villagers, it is more of a strategy to fight over interests and benefits, because keeping one's own *fengshui* is on the premise of infringing other's luck. So geomancers are apparently popular in the village, but excluded by villagers in deep heart, they are said to have a short life-span (*zheshou*) and die a sad death, just as a punishment for having infringed others' geomancy.

Housing disputes caused by geomancy could generate serious collision between neighbors. For instance, the general housetop is flat for people to climb by stairs, but some may have strange objects, like bricks in certain shapes at a corner, in fact it is a geomantic arrangement to shift one's disaster away to neighbors. Once the neighbors take notice of such imputation, they would regard him as culprit for their misfortune, and become at loggerheads with him after that.

Once a house is to be demolished or remolded, geomancers or fortunetellers must be invited to judge whether it is appropriate, together with when and where to break ground. If such procedures are omitted, a disaster would happen. I once heard a story told by a woman in Fanzhuang Village, whose family had not asked anyone to practise geomancy before house demolishing. This news was soon heard by a cousin of her family, who was blind but good at soothsaying. The cousin asked about the time and place of the house demolishing, and said they had made a big mistake, because they had torn the wrong corner. It should have been the south-western corner instead of the northeastern one to be broken at first. At that time, the house had already been dismantled to half, so it was believed that a misfortune would occur before January the fifteenth. Not unexpectedly, at the eve of January the fifteenth, the woman's father-in law suddenly got sick and passed away, just as her cousin had predicted. Such efficacious events are in fact a form of social control on the house construction, forcing people to be content with things as they are and give up breaking ground. Therefore, villagers could live in a house for decades without reconstructing it, which saves money from an economic point of view.

The village government, including the Village Committee and the Village Branch, lies in the center of the main street. In the south of the village government, there's a big stage for performing Chinese opera in Spring Festival or temple ceremonies, back of the stage is a fifty-meter high water tower, on top of which several speakers are installed. A small broadcasting studio is hung at the back of the village government to inform villagers of the latest news. Collective issues like family planning, tax paying on agricultural and forestry specialties are announced by the village secretary or the village director, while other personal things are broadcasted by a specially assigned person. Of course, individual messages, such as pear purchase, grain sale, tree planting, can be delivered by the speaker, but they should be broadcasted by that specially designated person. Since broadcasting is free of charge, villagers who want to deliver such business messages usually buy the announcer some gifts, like a pack of cigarettes or a bottle of wine, to make sure their news can be reported quickly and frequently.

The Village Committee and the Village Branch are grassroots implementers of state power, the former is short for the "Committee of Village Representatives"

while the latter refers to the "Village Communist Party Branch", and both are under the leadership of the Village Communist Party Branch Secretary (simplified as Village Secretary in the following). Other executive institutions include Militia Company (*Minbinglian*), Security Committee (*Zhibaohui*), Woman's Federation (*Fulianhui*), Mediation Committee (*Mintiaohui)* and Communist Youth League (*Gongqingtuan*), though they are directed by different people, all of them follow the dictates of the Village Secretary, and all the issues are managed by the Village Secretary and other cadres. Those grassroots agents of state power hold positions of authority, and redesign newly-implemented national rural policies to formulate the local ones (*tuzhengce*) to fit the actual situation. For instance, the funeral and interment reform, one of the most radical modern reforms, presupposes the traditional funeral customs "bad habits" which should be abolished or transformed,[2] and demands villagers to practice thrift in rituals. Though some related national policies are promulgated, those about funeral reform are hard to enforce, and villagers have thought up some appropriate "tactics" to handle the intervention of the state. To settle this problem, village cadres adjust the national policies to some local measures,[3] which not only safeguard the central authority but also protect villagers' freedom on holding funerals. As a result, villagers that need to hold funerals should hand in 300 yuan to the Village Committee as penalty, and then arrange the ceremony according to their will. Penalty is saved by the Village Committee, and will be used to bribe the superior supervisory department if necessary.

Before 1995, there was no market in Li Village, and Fanzhuang Town or Zhao County served as market for economic transaction and daily purchase. In 1995, village authority invested some money and set up several booths by setting several

[2]Another policy advocating the rural funeral reform maintained that cremation should be implemented, because nowadays the number of population is large while the farmland is shrinking. In local words, "the dead is invading the space of the living". Surely, the national legislative department has neglected the local's good use of land. The locals would not turn the cultivated land into graveyard, they will select wastelands to bury their loved ones instead, which could be seen from Fei's depiction of funeral customs in south of the Yangtze River (Fei 1939: 57). In Jiang Village, peasants set graves in mulberry fields, so that no farmland would be disused. Similarly, villagers in Li Village buried the dead in the contracted pear-tree orchard, without occupying the farmland. But the Civil Administration Department tried to fully implement cremation in all the rural areas, so as to replace the traditional custom of body burial. To avoid the government's intervention, people chose to bury the dead at night to realize their expectations for body burial. However, once known by the superior government, they must be faced with penalty.

[3]Several specific rules formulated in funeral reform in 1997 were as follows: (1) eliminating every kind of firecracker, making sure the safety of villagers during funerals; (2) advocating thrifty to fit the real economic situation, making sure low-income households can hold funeral as well. Trumpeters should not be invited, and the expense on coffin should be limited within 700–800 yuan; (3) preventing relatives from sending cloth, which can be converted into money as contribution; (4) providing only one meal for the participants in funeral; (5) following the guidance of chief manager (a person selected civilly to manage funeral) in different activities, like keeping vigil, digging a grave, or preparing transportation, so that extravagance could be avoided while frugality would be achieved.

Table 2.1 Statistics about the Market in Li Village

Name of sellers' village	Number	Distance to Li Village (km)	Location	Whether pear zone or not
Li Village	2	–	–	Yes
Nanlonghua	3	7.5	North-west	No
Gezi	6	9	North-west	No
Changxinying	1	4	South-west	Yes
Jiashizhuang	6	7	Due north	Yes
Yaoiiazhuang	2	2.5	North-west	Yes
Yangiiazhuang	2	7.5	North-west	No
Fanzhuang	4	3	Due south	Yes
Dahaozhuang	3	1.5	Due north	Yes
Xianmenlou	3	5	South-west	Yes
Ge'nan	1	5	Due west	No
Han Village	1	10	Due west	No
Gaotou	1	40	Due north	No
Damaquan	1	10	Due south	Yes
Gedatou	1	4	North-west	Yes

The original source The author's fieldwork notes

precast slabs on the main street for vendors, and promised to take off the tax in the following three years. It was said that each month had six market-days in total, including the third, thirteenth, twenty-third, seventh, seventeenth, and twenty-seventh in lunar calendar. When the market was first held, county opera troupe was invited to make performance in Li Village, which attracted a lot of people, and the market-days were announced by the occasion. I once interviewed 38 sellers in the winter of 1997, and the preliminary results are illustrated in Table 2.1.

From Table 2.1, we know vendors are mostly villagers within 10 km. Among the 38 interviewees, 14 persons live outside of the pear zone, and the rest are all from the pear zone. In this sense, pear zone villagers constitute two thirds of the vendors. They do business in neighboring villages and towns, usually coming early in the morning and hurrying home at noon to do farm work. They always group together or partake with other family members, but don't make trade jointly, for they just accompany each other on the route or at the market. Sometimes, family members come together to do business, because the trade is labor-intensive. Taking a food stand managed by a father and his four sons as reference, the father made vermicelli soup, while sons were responsible for baking pancakes, making fire and washing bowls, whose earnings were shared according to each ones's contribution.

In Li Village, market disputes are often caused by the preemption of booth. Once there was a vendor who pitched on the aisle and quarreled with nearby sellers over this issue, as he dissatisfied with his treatment, he declared one of his relatives worked in this village and tried to throw weight around. Irritated by his threatening manner, the others rose together and expelled him from that market. In fact, vendors at such small markets obey the principle that "voluntary trade benefits both sides", if it's breached by someone, the majority would judge through reasoning to end such affronts.

There's a Zhangye Temple in the village, whose history is nearly 100 years. As it was built to pray for rain, *Zhangye* is imagined and worshiped as a Dragon God. It is said every time villagers begged him for rain, he could bring it timely. The original temple was ruined during the period of Land Reform,[4] and the present one was relocated and rebuilt in 1989.

The village temple expresses its meaning by means of rituals. Besides the routine of offering incense on the first day and the fifteenth of each month according to lunar calendar, people hold grand fairs to celebrate *Zhangye*'s birthday during the three days around lunar October 15th. In that case, temple organizations within 15 km would come to Li Village for the fair.

As Leong and Tao pointed out, Chinese temples work as a center of social life, rather than that of religious life (1915: 32). Yang mentioned that villagers would talk about everything that happened in the village at the temple fair, which has little to do with the religious transcendental experience (1961). Villagers who pray for God are motivated by the idea that God can bring real benefits for them, as well as help them through difficulties and frustrations. It seems like a dramatic version of the real-life, from this point of view, temple can be interpreted as a stage upon which villagers could perform their life through rituals (Turner 1982).

Apart from Zhangye Temple, there's a Fengjia Laomu Temple charged by several Feng-surname organizers. It was once a small temple, and was demolished during the Four Cleanups Movement, and then reappeared as a temple organized by few villagers. Who is in charge of the association that year is entitled to enshrine the portrait of *Nanhai Guanyin* in his house, and the others would come to his house to praise and worship. After the temple fair in every lunar February 19th, the portrait would be handed to the next head by turns.

2.2 Separation and Reunion of Patrilineage

According to demographics in 1997, Li Village had 1,100 households, totally 5,000 people. 90% of them take Li as their family name, and the rest are surnamed Feng, Zheng or Yue. It's obviously a Li patrilineage-based family village.

Just as the common impression on Chinese rural society, it attaches importance to living and breeding in one place generation after generation (Fei 1985).[5] Li lineage

[4]Supported by the situation displayed in studies of the South Manchuria Railway Co., it's sure that villages in North China had many temples (Wang 1995: 75–76). In Li Village, there were at least eight big or small temples before 1949. Please look into Chap. 8 for more information.

[5]It is interesting to see the immobility of peasants from the perspective of national system. For example, in Ming Dynasty, there existed a "road guidance" system (Wu 1984: 578), which confined villagers within a range of 50 km. Once people walked out of the specified range, they should show certain *Yanwen* (identification) to indicate his destination. All key crossroads had checkpoints to interrogate the passing pedestrians. People who exceeded that range without "identification" would be captured and sent to the local fiefdom. In July 1373, an inspector in

has a history of 600 years, but all generations share the same collective memory that they come from Hongdong County, Shanxi Province.

During the late Yuan and early Ming period, wars and plagues occurred frequently in the central plain, as well as some natural disasters like flood, drought, locust plague, torrents from Yellow River and Huaihe River, the central plain turned into a desolate and uninhabited place. Since the Hongwu years of Ming Dynasty, people from other places had been organized to migrate and settle down in the central plain (Tan and Liang 1988). Unfortunately, the following 4-year Jingnan Rebellion (a battle between Emperor Chengzu and Emperor Jianwen of Ming Dynasty) caused great damages, making "few survived within thousand miles in Hebei Province",[6] and "south from Yanjing, where they passed through were ruined, nobody survived the slaughter",[7] which severely undermined the just restored productive force and social construction, and caused lots of death and wasted lots of farmland (Zhang 1983; Cao 1997). To strengthen national defense and state power, Ming Dynasty forced people to migrate from Hongdong County in Shanxi Province to the central plain again, so many migrants who are now living in North China saw Hongdong as their original hometown (Guo 1937; Zhang and Lin 1988; Zheng and Huang 1999; An 1999). Li Villagers are no exception, with their ancestors' migration from Hongdong County to Zhao County clearly engraved in the ancestral tombstone.[8] As historical geographers conclude, migration could densify the population of a certain place sharply (Ge 1994). The mass migration in

Lvcheng of Changzhou fiefdom captured a pedestrian who passed through the city without identification. When he was interrogated, he said that his mother was seriously ill, so he went here to seek medical advice and did not take the identification because he was in a hurry. The officer felt sympathetic for him, and released him after charge (*Mingtaizu Shilu*, Vol. 83, quoted from Wu 1984: 578). This kind of national law actually limits villagers from moving.

[6]Quoted from Zhang Gang, "Miscellaneous Collection Annals" (Biographical Sketch), in *Dongguang County Annals* (Emperor Guangxu period), 1983, Vol. 11, p. 145.

[7]Quoted from Zhang (1983), "Anecdotes Annals" (Military Part), *in Nangong County Annals* (1912–1949), Vol. 22, p. 145.

[8]This monument was set in the ancestral tomb, southwest of Li Village, and the inscription on tablet was as follows, "Humbly knowing that my ancestors were moved from Guobao Village, south of Hongdong County in Shanxi Province. In the early years of Ming Dynasty, emperor granted a special amnesty to my ancestors and ordered them to move to 20-km east of Zhao County.… my ancestor moved with his sons and two grandsons, in total almost 17 people. After they passed away, they were buried in the southwest of the village, with father's tomb in the west of the son's. The reason for this burial sequence was to make order among kinship and show the young's respect to the senior. Until 1759 (the 24th year of Qianlong period), they had lived in Zhao County for more than 400 years, and the family had divided into five branches, with the number of male offspring reaching to about 200. Though they always met natural disasters, they lived peacefully and had their offspring educated, whose efforts and achievements could not be denied. The sincere and kindly ancestors had toiled and moiled to guarantee the contentment of the descendants, so could we forget their blessings and grace? Thus we built a monument to the ancestral tomb, not daring to force each descendant to worship before it, but to express our gratitudes and let the offspring know some information about our forefather." Later, on April 3rd, 1989, some descendants of Li family in Li Village, like Li Jitong, Li Qingshan, Li Yunzhu, Li Xinqi and Li Tiexian went to Guobao Village of Ganting Town in Hongdong County of Shanxi Province to identify their ancestors and built relation with Li Hongxiang and Li Mingde of the same ancestor. The costs for this trip were shared by all the family members in Li village.

early Ming Dynasty, together with the fertile land in North China, did promote a dramatic increase of population in North China, like the first 26 years of Ming Dynasty, population in North China had been increased by over ten million in comparison with that in Yuan Dynasty (Gao and Wang 1986: 113).

Besides, some chorography researchers find from historical documents that since Ming Dynasty, benefits of having more male heirs had been propagandized by both civil customs and national ideology. As a result, Laomu Temple and *Guanyin* (Goddess of Mercy) Temple for praying offspring prosperity in North China realized a great development. Until the middle of Qing Dynasty, almost every village here had built a temple for *Laomu*, and each household would consecrate *Laomu* and *Guanyin* at home (Liang and Yang 1988: 43). This can be also seen in Li Village, where you can find a divine portrait of *Laomu* on each household's wall, no matter big or small.

According to the *Historical Records of Li Village*, Li Village was called Fengjiazhuang from Qin and Han dynasties to early years of Ming Dynasty. And it had been under the ruling of Julu County, Jingwuhou County, Songzihou County, Zhao County and State of Zhao successively over the centuries (Li 1993: 1). In the second year of Yongle in Ming Dynasty (A.D. 1404), a man named Lishi moved from Nanguobao Village in Hongdong County to this place, and settled in the south of Fengjiazhuang. Since then, Li lineage has lived here for almost 6 centuries, and descended to the 22nd generation. Long ago, there was a family temple to worship ancestors, but was destroyed during the Land Division in 1947.

With the expansion of Li lineage, in Qing Dynasty, exactly in 1759, the name of Li Village was engraved in a stone, signifying its equal position with Fengjiazhuang (Li 1993). Later Li lineage prospered while Feng lineage had less and less male heirs, at last, the previous FengJiahzuang was renamed by people as "Li Village". In *Zhaozhou Annals* in Qing Dynasty (Guangxu period), *li* and *she* (terms for grassroots administration) are referred to Li Village, while Fengjiazhuang is reduced to a part of it.[9]

[9]A local legend about the name of Li Village went like this: "It's said the ancestors of Li family moved from Hongdong County of Shanxi Province to here after the Prince Yan (Emperor Zhudi in Ming Dynasty) defeated the Emperor Jianwen in North China. After the fight, this place was sparse and desolate, with only about ten households living here, which was called Fengjiazhuang Village. Then two brothers in Li family moved in and settled in the south of Fengjiazhuzng Village. One day, a person from South China visited the village, who was invited by both Li family and Feng family to practice geomancy to select ancestral graves. The person asked them which one did they prefer, dignitary with high salary or flourishing population? As Feng already had ten or more households, whose population was larger than the other families, Feng chose to have high positions. In contrast, Li family only had four main strands, whose population was small and must count on Feng family, so they preferred to enlarge population. Then the person selected the ancestral graves for them according to their respective requirements. Afterwards, Li family began to flourish in population, three strands of which had larger and larger population. Now, the total member of Li family is more than 3,000, occupying more than 95% of the villagers, while only dozens of families of Feng have lived here all the time. Seen from the grave mounds of the Feng family, they were descended by one son all the generations. Sometimes, one family did have two sons, but one of the next generations would be extinct. The Feng family is not flourishing in

Since Maurice Freedman's classical research (1958, 1966), studies on Han family or Han lineage[10] had produced a "local lineage model" which was followed by later scholars in Sinology anthropology (Watson 1986; Wang 1996). Historians have proven that, the previous national patriarch system was popularized and gradually sub-alternated to civil clan through forebear worship, lineage temple building, family-owned land purchase, and genealogy compiling in Song and Yuan dynasties (Xu 1995: 99). Such patriarchal clans expanded quickly in Yuan, Ming and Qing dynasties, and played a significant role in South China, especially in provinces like Fujian, Guangdong and Hong Kong.[11] (Ke 1990; Zheng 1992; Chen 1996; Tanaka 1992; Hu 1948; Chun 1996) Even now, activities held by patriarchal clans still play a part in rural society (Faure 1986; Qian and Xie 1995; Wang 1997; Liu 1998).

In North China, Myron L. Cohen had conducted a research over the organization of patriarchal clans in a village of Xincheng County, Hebei Province. He asserted that the "kin consciousness" is strengthened by ceremonies on Tomb Sweeping Day (1990). Prasenjit Duara saw patrilineage in North China as an important agent in the "cultural nexus of power" (1988). In comparison, Fei Xiaotong regarded Chinese patrilineage as a network that embraces differential modes of association, which measures the closeness among relatives by the patriarchal shaft (Fei 1992: 63) Just as he wrote (Fei 1985: 23–24).

> In Chinese society, the most important relationship—kinship is similar to the concentric circles when a stone thrown into a lake formes. Kinship is a social relationship formed through marriage and reproduction. The networks woven by marriage and reproduction can be extended to embrace countless numbers of people—in the past, present, and future. The

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population. Then, the Feng descendants have ever owned high official positions? They did have one extremely highly-ranked official, the Emperor Zhao Kuangyin (the founding emperor of Song Dynasty). You may ask why the emperor, who doesn't name after Feng, is related to Feng family. That's because Feng's dream was realized at the drama stage. A descendant of Feng family loved *Bangzi* play very much and had acted the Emperor Zhao Kuangyin for his whole life. It is said that his addiction to acting emperor ruined his family's *fengshui*, so that Feng family failed to have people with high positions. In contrast, Li family was larger and larger in population and occupied more and more places for living, which produced an independent village. Though the previous village's name was "Fengjiazhuang", for more and more villagers knowing Li family, the name of "Li Village" enjoyed more popularity and became more well-known than "Fengjiazhuang", so the former gradually replaced the latter, and was spread over day by day (Quoted from Liu Qiyin "Origin of Li Village", in *Historical Records of Li Village*, pp. 126–127).

[10]"Lineage" (*zongzu*) is different from "family" (*jiazu*). It is generally thought that Chinese lineage means a group of people who are descended from the same ancestor. Lineage is divided into families, and in turn it is also the extension of "family" (Lin 1936: 128).

[11]Recently, Allen Chun has re-conducted researches on southeast family-centered villages, and his article challenged the present theories on Chinese lineage. He clearly asserted that for research on Chinese family-centered villages, how they were organized was less important than its cultural continuity, which should be paid more attention to (1996). Steven Sangren had noticed the organizational diversity and structural adaptability of the Chinese people (1984), but Chun emphasized that cultural uniqueness was the key to understanding the essence of the Chinese character (1997). Therefore, Chun paid more attention to how the Chinese culture was practiced in the civil society, instead of studying it as a sole dividing process of the family.

> same meaning is implied in our saying, "Everyone has a cousin three thousand miles away", with three thousand miles indicating the vastness of kinship networks. Despite the vastness, each network is like a spider's web in the sense that it centers on itself. Everyone has this kind of kinship network, but the people covered by one network are not the same as those covered by any other. We all use the same system to identify our relatives, but the only thing we hold in common is the system itself. This system is merely an abstract pattern, or a set of categorical concepts. When we use this system to identify a specific person, however, each term will have a different counterpart.

In the eyes of anthropologists, the kinship network not only reveals the differential modes of association on the vertical shaft, but horizontally contains a contradictory kinship. The latter is similar to the segmentary lineage system found by E. E. Evans-Pritchard in African tribes. He said that the lineage is a familial system, while family is a segmentary form of lineage, which has a structural consistency with the political segmentary system (1940: 142).

By segmentation, a political organization splits into two opposite groups, and the two groups break up into smaller units, meanwhile the segmented parts would integrate at a higher level. Such "segmentation" and "integration" among segments bring about a balance in political forces, which creates certain order in a tribal society that has no central authority (Gluckman 1965).

Combining Fei Xiaotong's "differential modes of association" with E. E. Evans-Pritchard's "segmentary system", we can see Li patrilineage is in fact a segmentary system with differential modes of association.

Li villagers think that they are related to the common ancestor through male forebears, so those share Li as surname are seen to be the same lineage. Because of the difference in pedigree, Li patrilineage is divided into four branches,[12] or four gu

[12]"Introduction to the northwest grave" was once written on the first page of *Family Tree* preserved by Li Qingshan, a villager in Li Village. It's of great help in understanding the family tree in Li Village. It reads: "All the generations should follow ancestral rules, show respect for the ancestral ethics, pay back the ancestral kindness, and give priority to filial piety. Though we were common people, we won't forget the blessing of our ancestors, so we redraw the family tree for the later generations' worship. The earliest ancestor Li Gonghui married Chen, who previously lived in Guobao Village, 10 km south of the Hongdong County, Shanxi Province. In the second year of the Yongle period of Ming Dynasty, they moved to the village called 'Licun' 20 km east of the Zhao County according to the imperial edict. After the earliest ancestor died, a grave was built in the southwest of the village. The grave included four generations in total. Zu Huiyan, ancestor of the third generation, was married with Zhang, and a new grave was built for him in the northeast corner near the original ancestral grave. Since then, only one family is descended by one son. Hui Gongmian, ancestor of the fourth generation, was married with Zhang, and a new grave was built for him in the southeast corner. Hui Gongrang, ancestor of the fourth generation, was married with Wang, and a new grave was built for him in the east of the village. Hui Gongyou, ancestor of the fourth generation, was married with Zhang, and a pear-tree grave was built for him. A grave was also built for Hui Gongcai (with no descendants) in the fourth generation. Hui Gongjun, ancestor of the fifth generation, was married with Hao, and was buried right in the east of the village. Hui Dachuan, ancestor of the ninth generation, was married with Wu, a new grave, named northwest grave was built for him in the northwest of the village, and the later generations are prosperous."

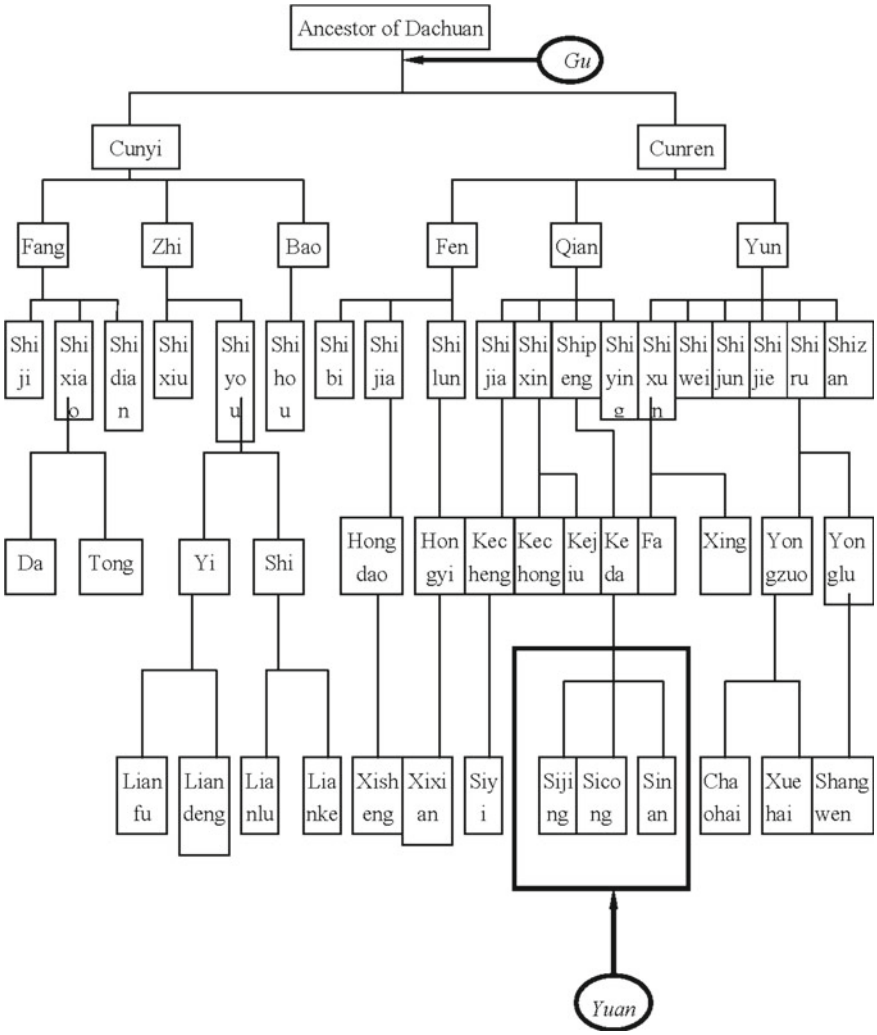

Fig. 2.3 Gu and Yuan in Li Lineage

in local words, under which people use *wufu* system to define their own yuan (see Fig. 2.3).

The differential modes of association is reflected by the order from forebear to gu, to yuan and then to family. Generally speaking, family is the core that shares the closest relation; secondly close is yuan, which functions as a unit between family and lineage, and domestic issues like family division would be handled inside their yuan (courtyard); thirdly is gu, a patriclan that includes a number of lineages

descent from a putative common ancestor; the last is forebear, which has the weakest relationship with individuals, and it can be shown in their yearly worship for the forbears' tomb.

As to the four gu, each has a different social position in the village (for convenience, they are named as A, B, C and D). Branch D is very special, though there are more births of heir in a generation, only one survives. People attribute this weird thing to their playgoer ancestor, who was destined to be a civilian but fond of playing emperor in operas, so the longer he had played, the less luck the lineage had got. As it is the least populated branch, D has no place in the village, and is also belittled by the others. Branch A, mostly living in the east, is more likely to possess wealth, though its population is less than B, it has landowners in pre-liberation days, and entrepreneurs and businessmen in the present. Branch B has the largest population, but most of them lived in poverty in the past, now it owns some intellectuals and officers, like academician, Village Secretary, Communist Party Chief and so on. Descendants from Branch C are mostly candid peasants, who are target group to be roped in by Branch A and B when they are in competition. For instance, in one year's election of Village Secretary, the chief from Branch B introduced his friend in Branch C to be the Village Head, so as to make the mission assignment smooth and easy, but those from A induced C's descendants to counter B's power by giving them some economic benefits.

The disappearance of lineage temple and clan assets is apparently seen as a differentiating and separating trend in lineage (Fu 1996), but the "kin consciousness" is largely dependent on kinship. For villagers, *wufu* is the basis upon which the kinship could be distinguished the far from the near, the close-related from the estranged, so village officers usually nominate his kin-related brothers or cousins, or his relatives within the same yuan as his assistants. In this view, joint property stressed by Maurice Freedman (1966) in the "local lineage model" is not the most important factor for the production of "kin consciousness", because consanguinity identity is more significant. This point is proven by other studies, like Guo Yuhua's study stated that the importance of consanguinity lies in social relations and rural patrilineage revival (Guo 1994). And also in sociologist Yang Maochun's early study in Taitou Village, Shandong Province, it is said that, due to the backward economy, north has less lineage temples and clan assets than south, patrilineages in north have strong power and cohesive force, owing to ancestor-worshipping rituals and the strong acceptance for common ancestry (Yang 1945). To some extent, the lineage organizing forms which are easily seen in south, like "inherited lineage", "attached lineage" and "contracted lineage" (Zheng 1992) are not suitable to name those in north, because here lineages are not produced by the joint clan property, but by the symbolic sign of ancestors.

Besides, from my fieldwork, the "kin consciousness" is always strengthened by the common identity for ancestral tomb. In North China, especially after 1949, ancestors were not worshiped by their *paiwei* in lineage temples or special rooms like those in south (Kulp 1925; Hu 1948; Wang 1997), but were venerated by

ancestral tomb-sweeping (Cohen 1990). Evidently, Li Village can be an example to reveal how the "kin consciousness" is accepted by the site selection of ancestral tomb.

The ancestral tomb in Li village lies in the southwest, and is recorded in *Li's First Ancestor Stele*. Villager Li Qingshan, author of *Introduction to Northwest Grave*, believes it is the gravesite where the first four generations of Li patrilineage were buried and Li descendants hold the ancestor-worshipping activities. Apart from this tomb, each branch has its own ancestral tomb. This phenomenon is a result of "pulling-out grave" (*bafen*), which means moving the closest ancestor's grave out of the corporate graveyard, and selecting another cemetery to bury and worship them. One reason behind it is the tombs are almost filled, which leaves no place for the newly dead, so those with close relation should be moved to other places.

Another reason for *bafen* is that due to the distinct social status among the dead, those who owned higher social status can be worshipped in the ancestral tomb, while the inferior ones must be moved out. For instance, Dachuan, heir of the ninth generation, was an Inspector (*Xingchaguan*) in Ming Dynasty, as he had glorified and illuminated Li lineage, he was buried in a new graveyard, later known as Northwestern Graveyard (*Xibeifen*). When Dachuan's younger brother Dajun died, the problem arose, because Dachuan had been moved to a new graveyard, and Dajun couldn't be buried in Dachuan's graveyard, neither could he return to the ancestral tomb. Finally, Dajun's descendants buried him in the eastern part of village, which was later named as Shadow-Back Graveyard (*Yingbeifen*). Such kind of grave moving could produce new family branches, in this case, descendants of Dachuan and those of Dajun were divided into two branches afterwards.

Though the big family keeps being separated on the whole, it is not easy to make such divisions, because the lineage would protect its integrity through some restrictions and taboos on grave-pulling and site selection.

In general case, only tombs of the last generation are allowed to pull. For example, if a great-grandfather has two sons, each grandfather has two sons, and each father has two sons, there would be eight sons in the last generation. If two sons from the same father want to move the grave, they can only pull their parents' tomb, without any touch on the other elder generations. This rule is rigorously followed by all villagers to avoid the potential punishment of the dead.

Furthermore, geomancy taboos depict grave-pulling as a mystical and discreet issue, which influences and even decides the offspring's geomancy. Therefore, if a grave is to be pulled out, people must ask geomancers for advice in advance, especially over the site selection. Because in their eyes, a person's death doesn't mean his non-existence in the world, instead, the goodness and badness, rightness and wickedness of his burial place directly impact the alive, and the underlying communication between the dead and the alive is realized through the visible land-form. It explains the meaning of *fengshui*, and is summarized by villagers as follows,

> I once heard from the ancients that man, animal, mountain, and land each has its shape. To practice divination to know whether a place is propitious or not, one should firstly look at its shape, find out the beginning and end of its dragon vein. Then discerning its

disappearing direction, and choosing its supplemented orientation, one should capitalize on the trend and avoid its potential danger. Dragons are of nobleness and lowliness, and mountains could orient forward or backward; water is of entirety and fraction, caves differ in deepness and length. Today, I calculate the ancestral tomb of Li lineage, finding its shape looks like a dragon….[13]

[13]The following is one strand (northwest grave) of the *Family Tree* in Li Village, preserved by Li Qingshan, a villager from Li Village. Generations from the first to the 22nd are recorded as following after being sorted.

Generation	Name	Character	Family name of spouse	Name of heir
Earliest ancestor	Shi		Chen	Zi'en, Zirou
Second generation ancestor	En		Song	Chun
Third generation ancestor	Chun		Feng	Gongmian, Gongrang, Gongyou, Gongcai
Fourth generation ancestor	Gongmian		Zhang	Jun
Fifth generation ancestor	Jun		Hao	Kuan
Sixth generation ancestor	Kuan		Tian	Zuo, You
Seventh generation ancestor	Zuo		Hao	Jieyong, Shiyong, Keyong
Eighth generation ancestor	Jie yong	Li	Dachuan, Dajun	
Ninth generation ancestor	Dachuan	Inspector in Ming Dynasty	Wu	Cunren, Cunyi
Tenth generation ancestor	Cunren	Enquan	Cheng	Qian, Yun, Fen
Eleventh generation	Yun	Humanities student, Maiwang	Ren, Yang, Zhang	Shijie, Shijun, Shiru, Shiwei, Shizan, Shiyun
Twelfth generation	Shiyun	Xiansi	Hou	Xing, Fa
Thirteenth generation	Xing	Student of the Imperial College, Chonghan	Meng, Chen	Tingqin, Tingzao, Tingzhi, Tinglan, Tinghui
Fourteenth generation	Tingzhi	Student of the Imperial College, Qirui	Feng	Chunxuan, Chunzhong
Fifteenth generation	Chunzhong	Township drinking honored guest, Canqing	Tian	Decheng, Huacheng
Sixteenth generation	Decheng	Yushen	Zhang	Conglong

(continued)

(continued)

Generation	Name	Character	Family name of spouse	Name of heir
Sixteenth generation	Huacheng	Dingbang	Guo, Hu	Conghu
Seventeenth generation	Conglong	Granted virtuous elderly person, Tengyun	Zhao, Zhang	Qingxin
Seventeenth generation	Conghu	Tribute student, Kongfeng	Wang, Hou	Qingjie, Qingchen, Qingqi
Eighteenth generation	Qingxin	Xiaoran	Li	Zuozhen, Zuodong
Eighteenth generation	Qingjie	Chaozhen	Cao	Guishu, Hongwen, Hongzan, Hongxiang, Hongru
Eighteenth generation	Qingchen	Rugu	Mi	Hongjun, Hong'en, Hongkai
Eighteenth generation	Qingqi	Sigong	Cao	Hongkui, Hongyuan, Hongbao, Hongzhu
Nineteenth generation	Zuozhen	Martial student, Dongze	Li, Mi, Jia, Zhao, Wang	Qingshou, Qingzhang, Qingze
Nineteenth generation	Zuodong	Haocai	Li, Yao, Zhang	Qinglin
Nineteenth generation	Guishu		Yao	
Nineteenth generation	Hongjun	Yachun	Zhang	Qinglai, Qingyuan, Qingfang
Nineteenth generation	Hong'en	Jinrun	Du	Qingyun, Qingyu
Nineteenth generation	Hongwen	Gaoyang	Yin	Qinghua, Qingnian, Qingshan
Nineteenth generation	Hongzan	Wanyu	Hao	Qingmei
Nineteenth generation	Hongxiang	Biansan	Zhu	
Nineteenth generation	Hongkai	Chenyuan	Cao, Cao	Qingzhu, Qingxun, Yingding
Nineteenth generation	Hongru	Tanwen	Du, Zhang	
Nineteenth generation	Hongkui	Shouyuan	Zhang, Liu	Qingzhen
Nineteenth generation	Hongyuan	Xitao	Geng	Qingxu, Qingmin
Nineteenth generation	Hongbao	Keqing	Zhao	Qingxue, Qingyi, Qingsuo
Nineteenth generation	Hongzhu	Lingxiao	Sun	Qingcai, Qingfei, Yingchou, Yingheng
Twentieth generatoin	Yingshou		Meng	Yingzhou
Twentieth generatoin	Qingzhang	College student	Li	Yingxi, Yingqun

(continued)

(continued)

Generation	Name	Character	Family name of spouse	Name of heir
Twentieth generatoin	Qinglin		Zhao	Yingchen
Twentieth generatoin	Qinglai	Chuyi	Li, Li	Mengxin
Twentieth generatoin	Qingyuan	Coubao	Geng, Ren	Mengdong
Twentieth generatoin	Qingyun		Meng	Mengqiu, Mengchen, Menghai
Twentieth generatoin	Qingze		Yao	
Twentieth generatoin	Qinghua	Shaoxian	Zheng, Wang	
Twentieth generatoin	Qingyu	Xuanzhai	An, Mi	Mengzhou
Twentieth generatoin	Qingfang	Zhaiying	Li, An	Mengqun, Mengying, Mengju
Twentieth generatoin	Qingmei		Meng	Mengshun
Twentieth generatoin	Qingnian		Zhang	Mengkuo, Mengbo
Twentieth generatoin	Qingzhen	High school student, Xusheng	Xu	Donghai, Dongtao(moved to Xie Village), Dongjiang
Twentieth generatoin	Qingzhu		Xu	Mengwu
Twentieth generatoin	Qingxun		Li, Tian, Zheng	Mengxi
Twentieth generatoin	Qingxu		Shi	
Twentieth generatoin	Qingshan	Normal University student	Li	Mengjiang
Twentieth generatoin	Qingxue		Du	Dongyang, Donghe
Twentieth generatoin	Qingding		Zheng	Mengshuan, Menghe
Twentieth generatoin	Qingmin		Zhao	Dongliang
Twentieth generatoin	Qingcai			Feng
Twentieth generatoin	Qingyi		Li	Dongkun, Yingli
Twentieth generatoin	Qingsuo		Zhang	Yingfeng, Yingqiang
Twentieth generatoin	Qingfei		Huaqiao	
Twentieth generatoin	Qingchou		Zhang	Dongrui

(continued)

(continued)

Generation	Name	Character	Family name of spouse	Name of heir
Twentieth generatoin	Qingheng		Xu	Dongshuan
Twenty-first generation	Yingzhou		Li	Yinke, Jinke
Twenty-first generation	Yingchen		Wang	
Twenty-first generation	Yingxi			Jinke
Twenty-first generation	Mengdong		Qi	Shenggui, Shengyun, Shengbo
Twenty-first generation	Yingqun		Dong	
Twenty-first generation	Mengqiu		Xue	Shengshui
Twenty-first generation	Donghai		Feng	Jianbo, Jianhui
Twenty-first generation	Mengwu		Wang	Huiming, Huishuang
Twenty-first generation	Mengshun		An	Zongpo, Zongyao
Twenty-first generation	Mengchen		Yin	Yinbo, Yinchuan
Twenty-first generation	Menghai		Geng	Shuangshui, Shuangbo
Twenty-first generation	Mengxi		Gao	Shenghui, Shengkao
Twenty-first generation	Mengkuo		Liu	Zonghui, Zongwei
Twenty-first generation	Dongjiang		Li	Jianle
Twenty-first generation	Mengqun		Liu	Xingbo
Twenty-first generation	Mengbo		Cheng	Zongli, Zongyu
Twenty-first generation	Mengxin		Geng	Conghui
Twenty-first generation	Mengshuan		Guo	Huiliang
Twenty-first generation	Mengjiang		Liu	Zongliang, Zongxian
Twenty-first generation	Menghe		Geng, Zhang	Huiqiang
Twenty-first generation	Mengying		Wang	Xingshui
Twenty-first generation	Mengzhou		Yin	Huixin, Huijian

(continued)

Dragon, an embodiment of feudal emperor in ancient Chinese culture, has integrated into the rural symbolic system. Tomb must lie in the "dragon vein", so that the prosperity and continuity of descendants could be guaranteed. Hence, *fengshui* of a tomb decides whether the family is prosperous or not. For instance, the Northwestern Graveyard (*Xibeifen*) stands for the flourishing population, while Northeastern Graveyard (*Dongbeifen*) means one heir a generation. For the locals, no tomb means no *fengshui* any longer, which spells the harshest punishment and some grievous disasters.[14]

Each gu has its own genealogy and genealogy case, the former records names of both the dead and the alive of Li lineage, while the latter only inscribes the dead for their merits. Both are kept by the most senior and highly-respected elder. The genealogy can be shown to the others while the genealogy case is being encased.

(continued)

Generation	Name	Character	Family name of spouse	Name of heir
Twenty-first generation	Mengju		Feng	Yunbo
Twenty-second generation	Jinke			Qian
Twenty-second generation	Yinke		Shi	Qianguang
Twenty-second generation	Shenggui			
Twenty-second generation	Shengshui			Fanxing, Fanguang
Twenty-second generation	Shengyun		Zhang	Fannuo, Fanlu
Twenty-second generation	Huiming		Wang	Fanmao, Fanbiao
Twenty-second generation	Jinke		Shi	Guangqian
Twenty-second generation	Zongbo		Song	Zhengkai, Zhenggang
Twenty-second generation	Jianbo		He	
Twenty-second generation	Shenghui		Xu	
Twenty-second generation	Shengbo			Fanning, Fanxiu
Twenty-second generation	Jianhui	College student		

[14]Therefore, at present, the nation tries to convince people to accept cremation by publicizing that the cultivated land would be gradually reduced by tombs. However, villagers prefer body burial to keep good *fengshui* for later generations, no matter how much money they would be fined.

On lunar New Year's Day, heirs from the same gu would visit the most senior elder, and kowtow to the genealogy case to worship their ancestors. Ordinarily, only the genealogy could be enshrined publicly, and its function is explained by villager Li Qinggang as follows.

> Approaching to the Spring Festival of Bingzi Year, records of Li lineage are enshrined.
>
> Descendants remember their forebears' blessing, and come to recall and worship.
>
> Literary grace of our forebear is superb, and it's impolite to waive these lineage records.
>
> Ancestors' names cannot be used by descendants, nor could call the dead by names, for it violates Chinese ideas of propriety.
>
> Not knowing if new car can follow the old path, still hoping the futurity could continue ancestral glory.
>
> Twenty-three generations of Li lineage are listed orderly, and each branch can write their own.
>
> Prosperous as Li lineage is, all branches come together to remember the past.
>
> We bear forefather's entrustment in mind, and anchor hopes on the following generation.
>
> We deliver the genealogy from fathers to sons, and solidify the roots of our lineage from beginning to end.
>
> We constantly recall ancestors' glory, and hope the later generations continue our work.[15]

Surely ancestor-worshipping is a part of traditional etiquette, and genealogy recording not only guarantees genetic inheritance but also social continuity. From the generational arrangement in genealogy, an ethic order is highlighted—no ancestry, no posterity. Ancestors are called as *ye*, who stand high above the masses and accept the homage of posterity, namely, there must be an authoritative forefather or an efficacious god to monitor utterance and action of people.

Within Li lineage, we can find an interesting phenomenon, and that is about the female's role. Once an heir gets married, he would meet successive domestic disputes. Case studies in Chap. 4 show that newly-married females always have conflicts with women from husband family, and finally it ends up with family division. Though Li lineage is a patriarchal descent, possession and division of domestic property are often completed by the female. As local proverb goes, "men are responsible for works outside the home, while women are in charge of domestic affairs" (*nanzhuwai, nvzhunei*), so female would make a direct impact on male's decision, especially in domestic division. In such case, wives are required to put fingerprints on division list, so as to avoid some henpecked men going back on his words. This point challenges the view that women don't play social roles in patriarchal descent groups (Watson 1986), and brings inspiration for academic discussion.

[15]Quoted from the first page of Family Tree of Li family, copied by Li Qinggang.

Through analyzing the structure of Li lineage, we know descendants of the same lineage have been segmented into several branches, and each branch maintains their kindred identity and "kin consciousness" through ancestor-worshipping activities. Consanguinity constructs the everlasting solid foundation for lineage, and stories are made up to rationalize the distinct status among branches. One important aspect ignored by previous studies is the significant role of female in the descent group.

2.3 Economy and Pear Trees

After discussing the settlement pattern and social organization of Li Village, it's necessary to introduce pear and pear trees, which are cash crops that bring wealth to villagers. The first time I came to the village by bus, I was attracted and shocked by pear trees in the lands along the road, apart from some old but thriving trees, saplings were planted in previous wheat fields, and the whole village was filled with pear trees.

Nobody could exactly tell how long they have planted pear trees. According to *Historical Records of Li Village*, the pear-tree plantation can date back to the period of *Book of Songs*, probably Xizhou Dynasty (Li 1993: 9).[16] In the west of village, there's a pear grove named Big Tree (*Dashu*), which is said by the elders that it has already been there before their grandpas' birth, in this view, it ages over 150.

As I noted above, Li Village lies in the ancient Hutuo River course, the alluvial plains of eastern Taihang Mountains, so fertile that was praised as "rich land" (*worang*) in Song Dynasty (Han 1993: 50). After 1949, the Shijin Canal was built, which ran through the eastern part of Zhao County. From the perspective of economic geography, people in alluvial plains used to irrigate lands by flooding, especially in torrential rain periods, flooding brought fecund earth on the mountain to farmland through channels.[17] Nowadays, villagers use motor-pumped wells to

[16]This kind of textual research is generally rough, however, without such archaeological study, the present research wouldn't exist. This thinking mode is actually an excessive pursuit for historical continuity, which can be seen as a cultural reconstruction as well, and finally may become a fictional historical sense imposed on the existing culture by scholars.

[17]Seen from Ji Chaoding's research, Chinese peasants have known the benefits of silt brought by the flood on farming land for a long time. In about 95 B.C., namely in early Han Dynasty, after the white canal (aiming to lead the water containing silt from the Jingshui River to a large area of farmland in Shanxi Province for irrigation) was built, a popular ballad went around among people: "The Jingshui River contains much silt, which can be used for irrigation, providing manure and growing crops, as well as feeding hundreds of millions of people in the capital." (Ban Gu, "Farmland Records", *History of the Han Dynasty*, Vol. 29, p. 8. Quoted from Ji 1981: 19) Ji Chaoding (1981) also took some examples indicating how people had used silt-contained flood to irrigate in the history. For example, when Yingshui River was mentioned in *Records on Linying County* (1660), it read "the Yingshui River is deep in source but small in flow, whose water quantity rise in summer and autumn. When rainfall is rich, bank collapsing could not be prevented. However, after the silt-contained flood is over, the places where the flood flowed to become fertile lands, from which most peasants in the southwest region are benefited, while the east and the

Table 2.2 Five economic zones of Zhao County

Area code	Name	Number of town	Village	The agricultural population	Total area (mu)
I	Fruit grain zone of Old Hutou River Course	6	51	82,692	204,065
II	Grain, animal, husbandry, and fishery area of Wangyanggou	2	13	28,990	74,990.2
III	Central and northwestern cotton and grain zone	14	160	224,676	550,418.8
IV	Grain, vegetable and cotton zone of Chengguan	2	21	25,392	41,645
V	Fruit, wood, grain, and oil area of Shahe River area	4	35	55,668	145,116
Total		28	280	417,418	1,016,236

The original source Chorography compilation committee of Zhao County in Hebei Province (1993: 108)

water land, since such land has several-meter-deep sandy soil in the surface and earth below, once it is irrigated, it could keep water for a long time, in turn benefits those geophilic and hydrophilic pear trees.

According to the division in agricultural region, Zhao County administratively owns five economic zones from east to west (see Table 2.2), and Li Village resides in the "fruit grain zone of old Hutou River course" where the pear-driven economy dominates.

Now arable land in the village has amounted to 5,000 mu, among which 2,300 mu are for pear trees. These figures are only a conservative estimation, for the actual cultivated area is much more. In recent years, as the market price of pear is on the

northeast region are badly affected by the flood. Sometimes, the bank would not been collapsed for several years, and the lands become deserts. So the peasants would make the bank collapsed furtively to fertilize their lands when the Yinghe River is rich in water. People in the Ying (nowadays the Linying County in Henan Province) said that the river had both advantages and disadvantages" (*Records on Linying County*, Vol. 1, p. 7). For another recent example, in July, 1932, the most serious flood in the past 80 years was occurred, but in the following year, an excellent harvest was obtained; the lands for several hundreds of mu in Tongzhou of Shaanxi Province also obtained unprecedented excellent harvest after the flood in 1932 (Ta Kung Pao, Tianjin, March 3, 1933). Furthermore, *Records on Jifu* stated the benefits brought by river flooding, "The Yongding River is rich in silt and beneficial for fertilizing the crops, wherever the river flows to and the slit is laid down, the deserted land becomes fertile, and the harvest has been increased by several times" (Records on Jifu 1871: 15). The *Records on Jifu* further recorded that in letters between Fang Bao and Gu Yongfang, the problem of flood prevention of Hunhe River (namely, Sanggan River) had been discussed. It was said that when the Hunhe River flowed to Gu'an and Bazhou, the bank was damaged and 50–100 km of lands among the two towns were full of flood. But after ten days or so, the flood retreated and the lands of the silt became the "gold laid lands", which was called by the peasants (Records on Jifu 1871: 54). The above content can be seen in the chapter "Fertilizer Efficiency Value of Silt" by Ji from pages 18–23 (Ji 1981: 18–23).

Table 2.3 Basic agricultural situation in Li Village

Year	Agricultural households	Agricultural population	Cultivated land area (mu)	Per capita income (yuan)
1966	513	2147	3441.5	–
1970	563	2468	3435	–
1980	695	3024	3435	250
1981	703	3093	3435	404
1982	723	3147	3435	250
1983	769	3205	5386	684
1984	784	3245	3435	1125
1985	776	3295	3435	1372.40
1986	786	3354	3435	1694
1987	787	3404	3435	1919
1988	–	–	3432.7	1933
1989	793	3444	3432.7	2002
1990	795	3891	3430.3	1871.50
1991	801	4004	3427.6	1861.81
1992	805	4005	3427.6	1888
1993	808	4450	3427.6	1900
1994	808	4572	3727.6	2180
1996	836	4602	3727.6	2993.5
1997	1100	5000	3727.6	2713

The original source National economy statistics of Zhao Country, statistics bureau of Zhao County

rise, many saplings are planted in villagers' own grain fields, congesting the previous *bafen* land. So wheat and coarse cereals are cultivated in between the rows of trees, because its yield cannot meet daily needs, villagers use pear profits to buy grains (see Table 2.3).[18]

Pear trees occupy most of fields and constitute a large part of villagers' daily life. Apart from sleeping, eating and watching TV, the rest time of their days is devoted to pears. Throughout the year, the busiest month is the one for handling pears, from lunar August 15th to the end of this month. Villagers busy themselves in orchard, with men picking pears and women loading or weighing pears. If they couldn't complete the work, part-time workers from other villages would be hired to give a hand.

Some special tools are invented to increase efficiency, like iron tripod (*wuzi*) used for pear picking. It is classified into two kinds according to its height, but both take shape of triangular cone, with one side being the ladder to let people climb up

[18]The difference between my fieldwork result and the following statistical figure recorded by the national statistical department is huge. When you come to a village, many people would tell you the official figure of the average living standard, which is in fact fictitious. The figure is made up under the influence of the superior department, with the aim to achieve the target of "well-off village" advocated by the nation, so figures listed here are just for reference.

and down. Pear-pickers use it to climb high, and fill the basket he brings with. Once the basket is full, people on the ground would take it over and pile pears on mats. Others wrap each pear with a white thin paper lest pears discolor into black, and then box them up according to their size. During the process, every procedure needs to be done with caution, so those involved in pear-picking usually trim their nails beforehand to avoid scarifying the peel.

Pears in Li Village are divided into two kinds, Yali pears and Snow pears. The former has larger output but is smaller in size, which looks like a little duckling. On basis of size, Yali pears are classified into four levels, 80, 96, 112 and 140, signifying the number of pears to fill a 17.5-kg box. The Snow pear is popular for snowflake dots, and its corresponding levels are 36, 45, 60 and 80. In most cases, the smallest Snow pear is of the same size as the biggest Yali pear. Years of experience make villagers good at distinguishing the size of a pear, which enables them to weigh a bag of pears precisely by hefting one of these pears.

Pears are always stored in refrigeration house, for only few of them could be sold out immediately. Pear-storing is called "*fanghan*" in the local dialect, which means to add sugar content. The time for storing is around November, which is the most leisure period for people. But a month later, the new task of pruning pear trees comes. Before pruning, they usually sweep up fallen leaves and bury them in deep holes, so as to improve soil fertility and to eliminate the insect eggs. Tree barks are also scraped to remove insects. After that, it comes the branch-cutting, of which the purpose is to raise the fructify ratio. If a pear tree is imbalanced in shape or its canopy has tilted, it's necessary to tie its branch with a stone, so as to let it grow in all directions.

There's a break for villagers to prepare the Spring Festival after cutting branches. Then on lunar February 2nd of the New Year, insecticide must be sprayed for the first time. It should be done just before trees shoot buds, and repeated every half month or a month. For pesticide, some insecticide would be poured in a one-ton water can carried by a tractor, and spread on the fields by a high-pressure pump. Usually, men would spray pesticides, while women stir insecticide with water. And this work would be repeated 13 or 14 times throughout the year. Apart from pesticide application, some manual methods are often used to remove insects, like "breaking-off little tiger" (*bai xiaolaohu*), referring to the removal of a castor bean-like "pear scorpion" (*lixiezi*) larva from the tip of branches.

Pesticide-spraying, together with manuring, improves fruit yields. Fertilizer has two kinds, organic fertilizer and chemical fertilizer, the former is mostly chicken manure while the latter is diammonium. Local residents said land fertilizing was initiated after the founding of the People's Republic of China. As the agricultural technology was encouraged to use in the countryside and the economic value of pear trees continued to rising, they gradually accepted and developed ideas like "scientific farming" and "scientific management", and accumulated experiences in fertilization methods. In principle, top-dressing is practiced in the blossom period, particularly when fruits begin to grow and blossoms tend to be separated from leaves. The amount of top-dressing relies on the age of tree, its growth and the

number of fruits. As to usage, cave fertilization and foliage dressing serve as the most popular methods.

The florescence of pear trees is in spring, which needs adjustment and clipping to guarantee the equal size of pears, in local words it is called (*shuhua*) and "fruit thinning" (*shuguo*). "Flower-trimming" means nearly 2/3 of the total flowers would be removed, leaving a place for fruitage every 22.66 cm (Li et al. 1993: 23). Half a month later, it comes to the "fruit thinning" period, during which those deformed pears and densely grown ones would be taken off.

In recent years, refrigeration house for pear-storing has appeared and replaced previous methods like hole-keeping or cellar-cooling. Refrigeration house works by ammonia cooling system to keep the temperature around zero degrees Celsius. As most refrigeration houses are built by individuals, they are owned and managed privately. When the price of pear is high, the refrigeration house owner would purchase a lot of pears from the village; when the price fluctuates, they rent the refrigeration house to peasants for storing, just charge cooling fees of each pear box instead of buying pears themselves. Building a refrigeration house is a large investment, and a 533 m^2 large one which could store 16,000 boxes would cost 300,000 yuan in 1997. As a result, they are usually built or managed by joint shareholders, especially those who have ties of kinship.

In Li Village, the main township enterprises are pear-centered ones, such as pear-box factory, wrapper-printing factory, and insulation mat factory. These factories are different in size; some occupy a large special space while some are set on the first floor of a dwelling, with the second floor for daily residence. They have one thing in common, that is, seasonality in production. One month before pears mature, raw materials are ready for manufacture; then during pear-picking, all factories greet their busiest days; finally when pears are stored, they meet operational downtime and gradually shut down. Though the peak period is intermittent, such factories bring lots of profit for villagers, because products manufactured in this village could also be sold to neighboring pear-planting villages.

Pears not only produce the interdependent economic relations with the locals, but also serve as a link to connect the outside world. Here pears have two roles, one is of commodity, and the other is about gift. The first one is fully shown in sales, especially when pear planters sell them outside, because most of pears are sold as commodities, and exchanged into cash to buy other necessities. Through such transaction, the locals know how to calculate input and output,[19] and have access to the world beyond village or even county.

Another social function of pears is of gift, because in the local eyes, the pears of Li Village are a good specialty, a precious present to others. In the annual pear harvest, boxes of good pears are delivered by Li Villagers for their relatives and friends. And some superior pears are sent by the village government to township or

[19]The author found many families had a small notebook to record how much money was spent and earned, including the annual expense in chemical fertilizer, pesticide, and the earning of pears. From all the income and expenditure, we can calculate the annual gross income.

county administrations, sometimes, township or county officers even write letters to the village government to ask for pears. Profits from pear sales are imposed with specialty taxes, which should be submitted to township government. It is seen by the state as a peasant's duty, but as to villagers it's a tribute to the state. Thus, specialty tax-paying could be understood as a way of sending gifts to the state. In the following chapters, we will see that the conflict between state and villagers always originates from the increasing tax on specialty. Especially when such tax surpasses the peasants' actual profits, tax revolts and tax dodge would occur frequently.

Furthermore, the symbolic role of pears in social activities should be noted. Every year after the harvest, the village government hosts a pear competition in the village primary school. In this activity, villagers are asked to attend with their biggest pear, and compete with the others in size, finally the one who has the biggest pear is the winner, and receives a bag of fertilizer as an award from the Village Secretary. In the whole process, students, teachers, villagers and officers would gather together. Obviously, the biggest pear symbolizes glory, whose legitimacy is conformed by the village government.

Pears also play a part in religious activities. As a kind of offering, they are placed at the center of shrine. And when villagers pray for gods, they always wish a good harvest of pears. There is no doubt that pear is a major medium that connects the folks and the deity.

Cultural meanings of pears include value judgments like "good" or "bad". A "good" pear is big, round, smooth and pure, while a "bad" one is small, crooked, rough, and dirty. Such judgments implicitly contain the artificial arrangement of material world, because in symbolical sense, big, round, smooth and pure are metaphors for "order", while small, crooked, rough and dirty symbolize "disorder". This distinction also works on matters and persons, if one is described as "dirty", he must be unpopular, and treated by others just like bad pears thrown out of the pile. "Dirty pear" symbolizes disorder in material world, and "dirty person" means disorder in social life. Due to the similarity, these metaphors can reveal the relationship of mutual arrangement between human and material.[20] In other words, when people construct the orders in material world, their own social status is ranked at the same time, because different experiences could be connected by metaphors (Pan 1997), just the same way how a society is built up.

[20]Zhou Xing once made a deep research on the homophonic relationship between "deng" and "ding" in the folk society, which was actually a metaphor. This research showed that the folk culture is not passively affected by the great tradition but is created spontaneously by the civil society. The corresponding metaphor between the "deng" and "ding" cannot be found in the revised national Chinese dictionary, but in the folk society, "deng", the light relates to "ding", male offspring of a family (Zhou 1997: 5). Besides, Naran once carried out a research on the symbolic meaning of people's name from the perspectives of relations among people, society and nature, and asserted that people's names actually reflect the interaction between man and nature, which represents the "continuous communication and interactive relationship" between them (Naran 1997: 33).

2.4 Shrink of Intermarriage Circle

Pear is a source of livelihood, and a medium to know the outside world. In the case of marriage, due to the fact of that most villagers live upon pears, few want to marry out of the pear zone. As a consequence, the rural intermarriage circle is firmly limited to the pear zone.

The pear zone covers the eastern part of Zhao County, and Li Village just lies in the most west. As villagers wish their sons or daughters marry a person from the pear zone, the marriage exchange circle of Li Village takes an oval shape, rather than a concentric circle which centers in itself. More precisely, it deflects to the east and spreads to the north and south.

Though the government once divided the county into five economic areas on the basis of economic crops distribution (Table 2.2), villagers simplified them into three parts—the east, the west and the middle. In local views, the east is the pear zone which enjoys prosperity; the middle is the residence of county government, whose industry thrives and business booms; the west is a staple growing place for grain crops rather than commercial crops, making it a poor and behindhand region.

Customs in each sub-area are different from each other. To the east where I conducted fieldwork, male does not need betrothal gifts to marry a girl form the same village or out of the village. Only with a house and furniture, he can get married smoothly, while his bride should bring abundant dowry like tractor, television, bedclothes and 20,000 yuan to marry him. Such tradition reigns over the pear zone and enhances the male's intention to marry a girl within the zone. That's because marring a person outside of the pear zone may meet difficulties, for one thing, a man without bride-price cannot find a girl to marry. Even if he finds one, the bride side may disagree. For the other, girls beyond the pear zone cannot afford so many dowries.

Some nubile male or female may find spouses outside the pear zone, because they are either physically disable or hard up at home. For example, a girl in Yin family is a dwarf, as she refused to marry a disabled man in the pear zone, she finally married a villager in Gaocheng County, 30 km away from Li Village. From the following table, we can know that most wives come from Li Village, some from the 2-km away Fanzhuang Village, and the rest from villages that are 5 to 25 km away (Table 2.4).

This phenomenon is different from Li Yinhe's investigation. Li conducted her fieldwork in Nanyang Village, Zhejiang Province, and found villagers there preferred to marry within the same town or county rather than the same village (1994: 59–60). While in my field site, the marriage exchange circle tends to be smaller, thus I name it the "shrink of marriage exchange circle".

In short, three factors have brought about this phenomenon: the first is the change of marriage values. Previously it was prohibited to intermarry within the same lineage, so Li Villagers had to find a spouse outside the village. However, as the increasing population has estranged and blurred blood relationship, the tradition

Table 2.4 Statistics of wives' native village in 24 households investigated

Wife's native village	Number of people	Distance to Li Village (km)	Direction	Whether pear zone or not
Li Village	5	–		Yes
Fanzhuang	3	3		Yes
Dadongping	2	2	Southwest	Yes
Dasizhuang	2	3	Due east	Yes
Xiaohaozhuang	2	2	Due north	Yes
Lijiazhuang	1	10	Northwest	No
Xiezhuang	1	1.5	Due east	Yes
Dongzhangjiazhuang	1	5	Southeast	Yes
Dongwangzhuang	1	3	Due north	Yes
Dahaozhuang	1	2	Due north	Yes
Xiejiazhai	1	6.5	Southwest	Yes
Xiaosizhuang	1	4	Southeast	Yes
Gedatou	1	4	Northwest	Yes
Tangjiazhai	1	9	Southwest	No
Nanzheng	1	25	Southwest	No

The original source The author's fieldwork notes

of "no marriage among those have the same-surname" is abandoned now, and those out of *wufu* can intermarry freely.

The second is the ownership of pear trees. Girls in the pear zone could obtain certain number of trees from the village government, once they marry someone out of the village, their ownership becomes invalid. And trees under their names would turn into a part of collective property, and be reallocated to others. Their husbands' villages would not give them trees until the next round of land-distribution, so girls in Li Village are unwilling to marry out.

The third is about their parents. Generally speaking, parents wish their kids live near by in order to get support in their old days, so they always find a daughter-in-law or son-in-law among their friends as soon as possible. Children are usually engaged at the age of seven or eight and their parents would not hide this issue, from which we can know its popularity in the village. According to my fieldwork, the above three factors determine the shrink of marriage exchange circle in the village.

A recent study in Xi Village, Henan Province, found the same narrowing tendency of marriage exchange circle. Shang Huipeng discussed its "nominal kinship" (*ganqin guanxi*) and proposed the concept of "internalization of marriage" (Shang 1997: 96), but he didn't sum up its causes, so it needed further investigation to explore.

The shrink of marriage exchange circle has intrigued population swelling in the village community, which means the increase of population per unit area and the corresponding reduction of cultivated land. This point is highlighted in Table 2.5, where lists annual changes in cultivated land and population. In 1949, the cultivated land in Zhao County amounted to 831 thousand mu, and its population was 256

Table 2.5 Changes in cultivated land and population in Zhao County from 1949 to 1986

Year	1949	1951	1955	1959	1963	1967	1971	1975	1979	1983	1986
Cultivated land (ten thousand mu)	83.1	82.7	83.1	78.1	78.9	78.8	78.1	78	79.9	77.7	77.8
Population (ten thousand)	25.6	26.4	28.8	29.9	30.9	32.9	36.4	38.3	39.9	43	44.57
Cultivated land per person (mu)	3.2	3.1	2.9	2.6	2.6	2.4	2.1	2.1	1.9	1.8	1.75

The original source Chorography compilation committee of Zhao County in Hebei Province (1993: 92)

thousand, so the average land occupation per person was 3.2 mu. Then in 1986, the total cultivated land decreased to 778 thousand mu, and population rose to 445.7 thousand, so the average land occupation per person was only 1.75 mu. From the table, we know in the three decades, cultivated land had decreased by 7%, but population had increased by 74%, and the average land occupation had reduced by 47%, almost half of the corresponding amount in 1949. We cannot attribute the rise in county population entirely to the shrink of marriage exchange circle, but it did paly a great role in the increasing population of Li Village.

Li Village implemented the HRS (Household Contract Responsibility System) and distributed trees for the first time in 1983. At that time, it had only 3,205 people, but in the second round of allocation in 1993, its population rose to 4,450. In this decade, population had increased by 1,245, and its growth rate was 39%. The new generation would be calculated in tree distribution, but the amount of the land for trees is invariable, as a result, each person would receive fewer trees and earn less per year.

Now, villagers try to plant trees intensively, and use more fertilizer, work longer to boost yield, while such involutionary production cannot prevent a drastic fall in pear price, nor avoid the drop in annual earnings. So the falling pear price, together with the increasing population pressure per capita, jointly has dwindled villager's earning.

Here it's necessary to explain the "agricultural involution", which is a term proposed by American anthropologist Clifford Geertz and developed from his fieldwork in Indonesia (1963), later it is adopted by Philip Huang to analyze the small-scale peasant economy in North China (1985).

In Huang's words, the "agricultural involution" means "an increase without development", which refers to a phenomenon that more workforce and time are devoted to farm work, but working efficiency and daily income remain the same (1994: 17). This term fits the situation in Li Village. No matter for developing economy required by the government, or increasing yields asked for by the villagers, planting trees is an effective way to raise the pear output. Thus slogans like "to be rich, to plant more trees" (*yaoxiangfu, zhonglishu*) are propagandized by government to boost local economy. However, population pressure itself would offset the earnings brought by economic crops, regardless of price fluctuation. As a

result, involution of pear trees becomes an irresistible trend, while the small-scale peasant economy cannot improve efficiency by decreasing population. For instance, after the implementation of HRS, the core family that includes parents and kids becomes the main workforce of farming. Although he workforce of a family is limited, agricultural production asks for more labor and time, so more families prefer to bear more kids even at the expense of fine.

At this point, the family-planning policy and its real operation must be introduced. The state demands each couple to bear one child, but when it is implemented in rural society, it turns into an unwritten rule—"bear more children, pay more fine".[21] Under this rural policy, villagers can hand in money to have more kids, and they would be fined twice, one for bearing the child, and the second for tree allocation. Only if one pays all the fines could have the ownership of trees and land. Fei Xiaotong once mentioned the population pressure, in his opinion, the traditional idea like "those who have more sons would live longer and enjoy prosperity" (*duo fu, duo shou, duo nanzi*) encouraged people to bear more, but it wasn't the sole reason for population increase (1981).

It was the small-scale peasant economy that required more workforces, especially male labors, which rooted the above idea in countryside, and encouraged people to have more kids. So it is in Li Village, those who are in labor shortage would have difficulties in pear production, just like the Village Secretary, who has to hire some others as workforce, because his two sons work out of the village.

In a word, the shrink of marriage exchange circle generates "involution" in pear production, which in turn requests more workforces. This point fits Ma Ruomeng's argument that Chinese small-scale peasant economy is not conducive to pushing agricultural technology reform forward, and the rural involutionary production potentially contains a vicious circle (1999: 330). Besides, such small-scale agricultural production is taxed by the government, and could incur conflicts between the decreasing output and the increasing taxes. Many civil disputes are generated by land issues or pear sales, which will be discussed below.

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[21]For the specific number of fine in Li Village, please look the "Establishment of New Authority" in Chap. 8.

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Chapter 3
Family and Family Division

Four sons ask for family division, snatching firewood and sticks.
Old parents are left alone, having no choice to do.
—A ballad from Liangshan, Shandong Province

3.1 The Meaning of Family

According to Fei Xiaotong, in Chinese families, father, mother and children form a bi-directional nurturing relation, and their relation can be compared to a triangle, with parents being the base and children at the vertex (1981). When children grow up, they get married and bear the next generation, thus a new triangle will be generated and gradually separated from the previous one. This process can be summarized as family division, which is the focus of this chapter. Based on the natural evolvement of family, Fortes proposed that every family would generally experience three stages: expansion, fission and replacement (1958). Expansion refers to the period from marriage to giving birth; fission starts from the first child's marriage and ends with the last one's; replacement means the newly formed families supersede the parental family after the old couple passed away (Zhuang 1994: 83–84).

From the perspective of filial piety, it seems that most Chinese families are large ones with several generations living together (Yeh 1992). Though large families may appear or exist in the history (Huang 1990: 230), the separated small families with only parents and children are much more popular in rural area, as seen from the general trend and final results. As Fei Xiaotong said, a family consisted of father, mother and children is the most common form in rural area, which accounts

This ballad is recorded in the third volume of "Liangshan Folktale" in *Collected works of Chinese Folktale* (1988) which is edited by collected efforts of Folk Literature Office in Liangshan, Liangshan County, Shandong Province.

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for about 80% (1981: 88).[1] According to Xu Jiaming's study on family division in Wayao Town, Yunlin County of Taiwan, living as a large family is an ideal for villagers, but in fact, people prefer family division and this phenomenon becomes even more frequent (1971: 343–345).

Ma Guoqing further argued that family division is a basic method for family reproduction, which can be realized by redistributing the property rights of original family. Coincidently, this method corresponds to the production mode of small-scale peasant economy (1997: 22–34), and shows the logic of cultural reproduction (Zhao 1999).

Studies mentioned above highlight the evolution of family structure, but ignore the potential conflicts during this process. Although Xu Jiaming had noticed that division is often caused by family disputes (1971), he didn't pay much attention to the resolution process. To some extent, family disputes mainly occur between parents and sons, or among sons, because the daughters don't have the right of inheritance and the duty to support the parents. Therefore, conflicts between parents and daughters won't be involved in family division.

In fact, disputes between parents and the married son can be classified into two kinds, one comes from son's dissatisfaction with property distribution or compensation; the other is from son's default in maintenance of his parents.

To avoid potential disputes, parents and sons in the rural society usually sign an agreement during the process of family division, which is called "division bill" (*fendan*). In this following part, rights and obligations behind division bills will be listed, so as to summarize the basic rules for familial reproduction. On this basis, some essential principles used by state will be further discussed, especially when national laws are intervened to resolve family conflicts.

[1]Study on number of persons in Chinese rural family was earlier indicated in Li Jinghan's survey about Ding County. The statistics showed that among 5,255 investigated rural families, the average number was 5.525 people a household (Li 1933: 137). Study conducted by Lin Yaohua in Yixu of Fujian Province showed that the average population per family was 5.27 (Lin 1935: 89). In the work of Chen Da, the statistics of 16 counties and districts showed that the maximum number of average population was 6.17 persons a household in Kunyang County; while the minimum was 4.18 in the Kunming city (Chen 1981: 133). The survey of Ma Xia in seven places revealed that the number of nuclear family had gradually increased (Ma 1985:130–133). The investigation of Cao Jinqing in the countryside of northern Zhejiang pointed that, by 1990, the nuclear family had accounted for 55.3% of all households. Besides, the tendency in familial structure was that the number of nuclear family was on rise year by year, while that of both linear joint family and linear family decreased year after year (Cao et al. 1995: 362). The statistics of Hebei Province reflected the number of four-person family had increased obviously, whereas the number of six-person or more families had decreased. For example, the proportion of three-to-five family rose to 69.42% in 1990 from 57.2% in 1982, which increased by 12.22%. Therefore, nuclear family was the main familial form in Hebei countryside (*Trans-century Chinese Population*, Hebei Volume, Editorial Board 1994: 95). According to the above statistics, the so-called "it can be frequently found different generations live under the same roof in China" does not hold water.

3.2 Principles of Family Division

Noted by previous fieldwork in countryside, family division not only means partition of familial property but also "union", especially on issues concerning the parental maintenance. Therefore, family division follows a certain mode that "division includes inheritance, inheritance contains maintenance, and maintenance embraces concentration" (Ma 1999: 218). This summary conforms to the facts in Li Village. The number of times of division depends on the number of sons of a family, and the division with the last son symbolizes the end of family division. When the last son finally separates from the family, parents usually have nothing in possession, thus they need sons to support them by turns. Sometimes parents may live with one of their sons, but they usually cook apart as long as both parents are healthy, while families with only one son usually prevent themselves from separation.

For villagers, family division is a life-changing event, so witnesses must be invited to ensure its validity and rationality. Normally, the father takes charge of family possessions and divides lands, houses, pear trees and other property into equal parts for each son,[2] then he will discuss with sons to see if they agree, especially to ask them whether they are in position to decide. If a son disagrees, or a daughter-in-law raises an objection, the father would adjust the way of division until all agree; if the family members are far from reaching a consensus, they would ask elders in the same kindred or sensible friends of the father to redress the scales. After all possessions are divided into equal portions, witnesses will be invited to make straws by rolling some written paper to make small balls, and see each son draw a straw on the spot. No matter the son is contented with his draw or not, he must accept the final outcome without pulling back. Sometimes the dissatisfied one would complain or quarrel with others, on this occasion, witnesses, neighbors or friends may intervene to mediate. After this, the division bill (*fendan*) must be concluded and signed,[3] with the father and each son signing their names and pressing their fingerprints just under their corresponding names. The father keeps the original manuscript, while each son copy one to save, so that all men in the family have a copy of the bill. In the end, a farewell banquet (*sanhuoyan*) will be held by this family to treat witnesses, which means that sons in this family will be separated from their parents and live apart after this dinner (Naoe 1991: 119).

According to Zhao Bingxiang's research in Shandong Province, the customary law mentioned in the folktale about family division has revealed two key points:

[2]Of course it is not absolutely equal. After dividing into several parts, parents must ask for each son's opinion. If they think it's almost equal, then the property can be divided. Afterwards, they draw to decide each one's share.

[3]"Family Division List" is also called "*Jiushu*", "*Fenduan*" or "*Biaofen wenbu*" (Zhang 1987: 79).

one is the partition will focus on property,[4] and the other is the division should be mede in-house (1997: 9).

But most of the division bills that I collected in Li Village include three parts: the first is a list of the property to be given to sons, the second tells how to support parents, and the third is about how to bury the elderly. Certainly family division is not only to separate parents' belongings, which is also to specify each son's obligation in supporting their parents. For instance, a 60-year-old man named Li Jinhuai, who makes additional money by seal cutting in spare time, divided his family five years ago when his youngest son got married, and he invited his wife's brother to be witness. To avoid unnecessary discord and potential renege, he requested his three daughters-in-law to leave their fingerprints on the bill. His division bill contained the three parts that mentioned above.

Division Bill

Li Jinhuai, the parent, has three sons, Guowei (oldest son), Guoxun (second son) and Guozheng (third son). As all three sons have grown up, they should live independently and make their own living. Li Jinhuai's property, including pear trees, land, tractor, table, chairs, cupboard, watch, bicycle, cooking utensils and so on has been divided equally among three sons. His motorcycle, TV and furniture will not be divided now, because he will continue to use them. Parents have the responsibility to bring up children, so their sons also have the obligation to support their parents, which includes offering him place to live, taking care of him, holding funeral, and attending to his needs. To avoid quarrels, this division bill is written down. All four persons should keep one copy and keep their promises. The following are the clauses,

1. The parent has paid for building the house, each son should pay 3,900 yuan;
2. The parent lives in each son's house for two years by turns. In 2001, when the father reaches 66, he will live with the oldest son;
3. Sons must let their father live in the two northern rooms;
4. Sons must give 125 kilograms of wheat, 75 kilograms of corn, and 700 yuan every year to the parent. The amount of other food varies by each family.
5. If the father cannot do seal cutting anymore, the amount of food and money mentioned in clause 4 will be increased accordingly.
6. If the father is ill and cannot live on his own, the sons must look after him and take him to the hospital.

[4]Family division is premised on property distribution, which is an organizational form in Han people society. There are two types of evolution model of this form, one is "wealth never survives three generations" and the other is to set up the public family property, and each son will take turns to manage it for a year (Chen 1997: 125). The former is common in North China, such as the investigation conducted by Jing and Luo (1959) on Shandong squires' property transformation. Their study showed that due to family division, the capital of rich families was hard to accumulate for a long time. Almost after three generations, the mass ancestral property would be divided up by descendants. And some descendants were reduced to poor landlords due to the lack of property. The latter one is common in South China and Taiwan area (Sung 1981), where each family branch manages the public family property in turn, with no one owning the right to sell off the property. This model can protect the ancestral property from decreasing because of distribution (Chen 1997).

7. Pass away. The funeral will be held at the last place where the father lived, with the fee equally paid by three sons.

The parent Jinhuai (fingerprint)

In 1992

Contractors:

Oldest son Guowei (fingerprint) and his wife (fingerprint)

Second son Guoxun (fingerprint) and his wife (fingerprint)

Youngest son Guozheng (fingerprint) and his wife (fingerprint)

To make comparison, another division bill is presented in the following,

Division Bill Among Li Dajun, Li Erjun and Li Sanjun

1. List of present property

1) A wooden table, a cart, two wooden chairs, a square table, a half-new bicycle, an old bicycle, a cupboard, a small dining square Table
2) Five northern rooms, three wing-rooms and openings.

2. Property division

1) The oldest son Li Dajun gets a cart, a bicycle, ten wingceltis bars, one and a half red-brick room, and 2,500 bricks.
2) The second son Li Erjun gets an old cupboard, a half-new bicycle, ten wingceltis bars, one and a half red-brick room, and 2,500 bricks.
3) All other property belongs to the parents, which will be inherited by the youngest son after they pass away.

3. Supporting parents

1) Parents' pear trees and farmland will be equally divided into three parts in the second year of the youngest son's marriage, and each son must give their parents 100 kilograms of wheat, 100 kilograms of corn and 600 yuan every year.
2) Wheat and corn must be dried and sent to the parents' home after harvest and money must be paid before October 1st every year.
3) Parents use the two northern rooms and one wing room until death, and then the youngest son will inherit them.

4. Residential land of each son and parents' living place

1) Apart from the items mentioned in the clause 1, the oldest son and the second son each will get one piece of land for housing, and parents will not support their sons with money or things.
2) The oldest son and the second son should not interfere with the youngest son's house, which will be built by the parents in the future.
3) Parents will live with the youngest son until death.

This bill has three copies, with each son keeping one.

Words alone are no proof, and the bill is guaranteed by the written words and fingerprints. The bill cannot be altered and is valid forever.

Li Dajun (fingerprint), Li Erjun (fingerprint) and Li Sanjun (fingerprint)

From the division bills above, we can see several principles are implicitly adhered by parents and sons, which are also the premises for its validity. First, parents raise children, and children must support parents; second, parents' property should be equally divided among all sons; third, as parents build houses for sons, children should offer living place for parents in return; fourth, each son bears the equal responsibility to support their parents; fifth, nobody can withdraw from a written bill with fingerprints. The first principle is the most fundamental while is violated most frequently, and reasons behind it will be discussed later. It's worth noting that every detail of each clause in the division bill is clearly written down because sons often refuse to support parents. This characteristic can be seen in the following bill,

Bill on Supporting the Parents

Li Huzhen and Li Zhenxue write this bill to clear responsibility and keep harmony. Each one must support his parents every two years, and take care of them by turns. At present, their parents are living with Huzhen, and will be supported by Zhenxue from August, 1991 to August, 1993, and then will be looked after by Huzhen in the following two years. During the two years of maintenance, the son must provide food, clothes and firewood. If a parent gets sick, the two brothers should pay fees equally. If the parent is seriously ill, he will live in the current house until death. Words alone are no proof, and the bill is guaranteed by the written words and fingerprints. This bill has three copies, with each son having one and the parent having one.

Witness Li Jichen (fingerprint) Li Shuntong (fingerprint)

Li Yunqing (fingerprint) Li Jinshuan (fingerprint)

Writer Li Jingtong (fingerprint)

April 24th, 1991

This supporting bill is actually a revision of the original division bill, because after family separation, conflicts between parents and sons were aroused by the unclear responsibility of supporting. Therefore, the father had to invite his brothers as witnesses, and asked them to help making a supporting bill. One witness, Li Shuntong, had been the village party secretary. And the reason for inviting these witnesses is for persuading the two sons to agree with the bill.

Some researchers had noticed the principle of equal division between sons, but they ignored its process (Cohen 1990; Zhao 1997).[5] In fact, equality is usually realized through compensation. For example, sons at home must give money to brothers who have to build their houses elsewhere. But the fourth principle of equal share of supporting cannot be violated and it is reflected in the following division bill,

[5]Cohen emphasized that sons had equal rights in family property division (1990: 518). Zhao Bingxiang collected a Family Division List in Lin Village of Ju County in Shandong Province, which read "all property should be divided equally" (1997: 49). What's more, on each of the 50 Family Division Lists collected by Zhang Youyi in local areas of Anhui Province in Qing Dynasty, the rule of "equal division of property" was particularly emphasized (1987).

Division Bill

Parties: Li Jingduo, Li Jingyu

1. House division:

The old house belongs to Jingyu, including 5 principle rooms, 4 western rooms and 2 eastern rooms. The new house would be built by Jingduo alone and become his own property. Jingyu will pay Jingduo 3,500 yuan for house building.

2. Parents' place of living:

The parents will live with Jingyu until death, and they shouldn't move out before death. The parents have the right of living in Jingyu's house, but do not have the right to transfer. Once the parents get sick, they should be looked after by the four brothers by turns, each taking care of them for five days, and starting from the oldest son.

The parents' 0.98 mu of land and private plots belong to Jingyu, which should not be divided among the other three brothers.

Words alone are no proof, and the bill is guaranteed by the written words and fingerprints.

Contractors: Li Jingduo (fingerprint), Li Jingyu (fingerprint)

Witnesses: Feng Chenxian (fingerprint), Li Yunbing (fingerprint),

Li Shuangsuo (fingerprint), Li Meiqi (fingerprint), Li Guangshan (fingerprint)

March 17th, 1985

In this division bill, the first section specifies property compensation between the two sons. The principle of equality, like looking after the parents by turns when they are sick, is kept even though the parents determine to live with the youngest son. When I conducted the study, the father was sick, and the principle of taking turns worked. Each son looked after the father for five days by turns. During daytime, the daughter-in-law took care of the father, while the son looked after his father in the night. Witness Li Shuangsuo is a senior in their family, and Feng Chenxian is a good friend of the parents, who is famous in the village as he is good at reasoning.

It should be noted that in Chinese society, filial piety is a means of social control, through which undutiful children would be reproached by the public, and it is used to eliminate or reduce unfilial behaviors. Besides, property plays an important role in children's commitment of responsibility, as the parents divide their property equally to each son, once the son receives his share, they must shoulder the obligation to support his parents.

Therefore, family division is an arrangement of the remaining lives of the parents. In fact, the arrangement of supporting the parents is always specified in the division bill. Having sons to support their lives is especially important for the parents. For those with no sons, they would find alternatives to get support. In the village, we can observe that the elder with no sons would often have a live-in son-in-law, or pick his nearest relative's son as agent. After their death, their property is undoubtedly inherited by the agents. In other cases where the son dies before the parents and the daughter-in-law cannot support the parents, the parents would discuss with the daughter-in-law and find her a new husband who would

serve as the agent. There's an old man in the village, whose son died from a car accident a few years after marriage. The man found a husband for his daughter-in-law from Inner Mongolia and made a contract with him. In the following bill, we can see his daughter-in-law Zheng Zanghuan turned into his daughter, and her new husband Li Shunqi played role of the live-in son-in-law. Therefore, he could inherit the man's property. But compared with sons, the right of live-in son-in-law is limited.

Contract

1. Li Ruige has adopted La Quan as son, and the latter's name will be changed into Li Shunqi.
2. Li Ruige's grandson Li Zhe and granddaughter Li Hui call Li Shunqi "uncle". Li Shunqi's children call him "father". After Li Shunqi dies, he can be buried in where he likes, but Zheng Zanghuan must be buried with her first husband Li Guobin.
3. If the family is broken, the contract can be breached and the house will belong to Zheng Zanghuan and Li Zhe.
4. Li Shunqi, together with Li Guoshun, has duty to support Li Ruige. The division of the parent's property follows the previous division bill.
5. Li Ruige won't build up economic relation with Li Shunqi's previous kins.
6. Li Ruige and other family members promise to treat Li Shunqi as kin, and will discuss matters with Li Shunqi to maintain a good relationship.

Contractors: Li Ruige (fingerprint), Zheng Zanghuan (fingerprint), Li Shunqi (fingerprint)

Witnesses: Li Wenyi (fingerprint), Li Genmao (fingerprint), Zhang Guochao (fingerprint), Zhang Wenshuan (fingerprint), Zhang Yunzhang (fingerprint), Li Quntai (fingerprint), Li Wenhai (fingerprint), Li Wenjiang (fingerprint), Li Yihe (fingerprint), Li Chouzi (fingerprint), Li Xinhe (fingerprint), Li Zhibin (fingerprint), Li Lankui (fingerprint), Feng Jingxin (fingerprint), Zheng Shuqun (fingerprint).

February 12th, 1997[6]

Most disputes regarding parents supporting result from the fact that sons refuse to shoulder their responsibilities after family division. Disputes during family division are common in rural society. To some extent, such disputes lead to familial conflicts in parents supporting. In the following section, I will mainly introduce the interaction between law and customs when conflicts are brought to the court.

3.3 Disputes Caused by Family Division

Principles mentioned above are about family division and parents supporting, in rural society, they are internalized by people and become a part of consensus, rather than legal clauses in words. Once a person breaks the rule, the relationship of his or her rights and obligation with others would be destroyed. At this time, people always resort to three kinds of authorities to restore the previous relation, the first

[6]This contract was provided by the accountant Li Wenyi; many thanks for his help.

level is civil authority; if it fails, Village Mediation Committee which represents the state power will be asked to mediate; if it doesn't work, legal authority will be involved as the last resort. In my opinion, it is the general resolving procedure for a rural dispute.

Let us analyze an example of dispute resolving on family division by the court after the failure of previous two authorities. This familial dispute happened in another village near Li Village, and it happened after a son couldn't receive compensation as stated in the division bill from his brothers after the family division.

The plaintiff in this case is Li Xianhui, 33 years old. The defendant is his two years older brother Li Xiansuo. The other two brothers Li Xianqi and Li Xianzhao are also involved in this case, because they once signed a division bill in 1991.

Family Division Bill

After a discussion among uncles, parents, cousins, brothers and sisters, the following items are agreed,

1. Residential place includes the two houses at home and the two in the east of the village.
2. House: Parents would live in the northern two rooms of the north yard until death. The person who gets the north yard should contribute 1,200 yuan, who gets the south yard should pay 800 yuan, and who get the two houses in the east yard would get 1,000 yuan respectively. If the residents in the north yard cannot get along with their parents, the parents may either build walls in the yard or receive 2,000 yuan to build a new house elsewhere. Those who get the house elsewhere should move out of their current house within three years to fulfill this division bill.
3. Hole-filling in the east of the village: four sons bury holes together, and undertake other costs. The holes in the east must be buried within 1992. If it fails, others should pay for earthwork. The two households in the east get 3,000 yuan to build kitchen and toilet.
4. As to the eastern two houses, a nine-inch pave way must be reserved as a public place.
5. Each son should give the old parents 150 kilograms of wheat before Slight Heat every year, together with 50 kilograms of corn, 2.5 kilograms of beans before winter begins. Each should pay 10 yuan on the first day of every month as the parents' living allowance, and 10 yuan as costs of Spring Festival. Moreover, all of them should provide 2 tons of coal before the first day of lunar December. The four brothers are also equally responsible for providing parents' with fees for other people's marriages and funerals. If the parents get ill, all of the sons should take turns to take care of them in half a month's period starting from the oldest son, handing over responsibilities on the first or the fifteenth day of every month.
6. Those who don't eat with parents can get 2 mu of land, and the rest land belongs to the four brothers equally. After Xianzhao gets married, all of the land should be redivided to each son.
7. As to the 1000 yuan debt, Xianhui should pay 500 yuan, with Xianzhao and Xianqi repaying 250 yuan respectively.
8. Xiansuo, Xianhui and Xianzhao each will pay 600 yuan for Xianqi's marriage, and Xiansuo, Xianhui and Xianqi each will pay 600 yuan for Xianzhao's marriage.

Division result: Xiansuo lives in the east of village's east, Xianzhao lives in the west of the village's east, Xianhui lives in the southern yard, and Xianqi lives in the northern yard.

Words alone are no proof, so we write this bill to guarantee its validity.

October 25th, 1991

From the division bill, we know Xianhui got the south yard, while his brothers Xiansuo and Xianzhao got the land in the east of village, so they should have moved away from the south yard and let Xianhui move in within three years after the bill signed. As they disobeyed the contract, Xianhui sued them to the court.

In Xianhui's indictment, he asked his brothers to leave his yard immediately and to pay 5,100 yuan as compensation, while his brothers argued that they had to fill the big hole in the east together first, so that they could build houses in that place. Besides, the bill showed that all four brothers should have filled the hole together and payed the cost equally in 1993. However, Xiansuo said his three brothers buried holes together in the beginning, but they gradually slacked, and he himself continued filling the present uncovered holes. Moreover, Xiansuo did not get Xianhui's fees for earthwork and house-building. So Xiansuo argued that he couldn't make room for Xianhui because his house hadn't been finished yet. As a result, Xiansuo demanded Xianhui to pay him 800 yuan as earthwork fees and 800 yuan as housing fees.

The court tried to mediate but failed, and brought in a verdict to resolve this dispute.

In this case, we are concerned about the question of what principles the court followed to resolve the dispute. Such principles may be the motivation for the judge to reach a verdict. We should find the motivation from the trial itself. Below is the court's understanding of the dispute and the court decision,

> We believe this division bill is in accordance with the relevant provisions of law. Defendant should leave plaintiff's house, and the plaintiff should pay defendant and Xianzhao 800 yuan each for house-building and pay the defendant earthwork fees. As the defendant has paid 1,694 yuan as earthwork fees, plaintiff should return the defendant 424 yuan. The left holes should be filled by the four brothers together. Since the mediation did not work, the court made the following decisions:
>
> 1. The defendant should leave the plaintiff's house within a month;
> 2. The plaintiff should pay the defendant and Li Xianzhao 800 yuan respectively, and return the defendant 424 yuan within ten days;
> 3. The plaintiff and the defendant should fill the holes in the housing land within a month after the decision takes effect.

It's obvious that each party's right and duty that were redistributed by court were similar to those clearly written in bill. Those who suffered loss should be compensated by the others. For instance, as earthwork fees should have been shared by all four brothers, but his older brother had paid all, Xianhui should undertake his part and pay his brother money, which amounted to 424 yuan. One point still confused me, for Xianhui did not get compensation from his older brother for the latter's postponement in leaving place. As to this point, the judge responded that it's because his brother's deed hadn't brought direct damages to Xianhui. Here was a section of the dialogue between the judge and the two parties,

Judge: Do you have anything to say regarding the first and second clause of the court's decision?

Plaintiff: Nothing.

Judge: Defendant, how will you carry out the judgment?
Defendant: Just as it says.
Judge: You should move out before August 16th, if you disobey, you should be held liable, are you clear?
Defendant: Yes, I will do as you say.
Judge: For the third clause, both of you should pay earthwork fees, do you agree?
Plaintiff: Yes.
Defendant: Yes.

From the above, we can summarize that two rules were adhered by the court in resolving disputes. First, national law confirms the validity of family's bill, and makes judgments according to rights and duties specified on it; second, only those who experienced material damages can be compensated.

3.4 Disputes Caused by Parents Supporting

As noted above, support obligation is the core of division bill, which reflects its importance in a family. Investigation by Nie Lili in Liubao Village, Haicheng City in the northwest of China shows that in the modern countryside, it's frequent to see a son refuse to support his parents after family division. In her eyes, the filial piety stressed in Chinese tradition is almost disappeared in reality, while behaviors against it become much more popular. For example, some parents have to sell their house to children, and then move into a hog pen; some sick parents want to eat fresh vegetables, but are refused ruthlessly by their sons (Nie 1996: 873–873). These real matters are against the Confucian spirit in *24 Stories of Filial Piety*, and make people think the preaching of Confucian spirit cannot build the moral kingdom in folk life.

It is necessary to analyze some disputes on supporting parents. Family division in fact means transferring the property right from parents to sons, and distributing it to each son equally. According to customs, sons should support their parents in turn, and each of them should shoulder the same obligation. However, the above "feedback model" proposed by Fei (1983) is difficult to work in reality, either because the parents have distributed property unequally, or the son cannot fulfill their obligations.

When such disputes are escalated to a court case, the basic principle for settlement still relies on the "feedback model" in customs, which acknowledges that the elderly have the right to ask their sons to support them. In the words of the locals, "supporting the old is right and proper". Therefore, the first principle for court judgment should be "no matter who is right, supporting the old is the first priority".

This principle is shown in the following case of parents supporting. Here I try to truthfully show the statements of both sides, and examine each side's explanation in

terms of rights and obligations. In comparison with the judge's decision, we could see how customary order gets recovered through resorting to the court.

In 1989, a helpless mother sued all her sons for not supporting her. The mother's name was Zhang Jingmei, a 70-year-old widow. She had three sons, the eldest son was Li Siren, the second son was Li Sijiang, and the youngest was Li Sihai. At that time, the eldest son had been married and moved to Gedatou Village, which was 3 km northwest of Li Village. The other two lived in the same village with their mother. Zhang filed the following complaint orally, and sent it to Fanzhuang Village Court.

> I have three sons, the eldest son Siren was married and moved to Gedatou Village. And the other two sons settled down in Li Village after got married. My husband and I divided our property between the two younger sons, including the land and pear trees. But these two sons didn't support us after family division. My husband was frozen to death in Sihai's newly-built house on the 19th of last November and they also maltreated me in various ways. At the end of the year, they even didn't let me go home. My eldest son couldn't bear their abuse and took me to his house. During that time, my second son Sijiang visited me twice. However, until now, my youngest son Sihai still doesn't allow me to go back home. Siren had been to Li Village and tried to persuade Sihai for several times, and I also put in good words to him, but nothing worked. Beyond endurance, I have to sue Sihai and Sijiang for not supporting me. My two sons neither support our living nor bury the dead. Therefore, I have the following requirements: (1) as my husband and I have raised them, they should pay me for bringing them up; (2) return my property, or build two rooms for me in Gedatou Village; (3) as they have inherited my pear trees, they should at least pay me 2,000 yuan a year, which is calculated according to the average price of pears. Otherwise, they should return the trees to me, and repay me the money they have earned after getting the trees since family division. No other requirements.

Sijiang and Sihai replied to their mother's indictment as follows,

Li Sijiang's Pleading

Dear Judge:

I am the defendant, who is also the plaintiff's son. As a son, I really don't want to confront my mother at court. But for her fake charges, I cannot but to refute it.

I have endured my mother's verbal abuse for many times. As she is my mother, I thought if I can offer her materials, money and happiness, she would let me live a peaceful life. Nevertheless, the more I give her, the more she demands to take (now I have to say so). She once claimed, "I made mischief between Sijiang and his wife on purpose, I will not allow them to live well." I have two brothers, Siren and Sihai. I earnestly wish my mother could treat us equally without discrimination, but she always confounds right and wrong, and calls white black, or even accuses me. I believe the judge could prove my innocence.

I didn't force my mother to move out. At that time, my mother invited others to be witnesses, and asked Siren, Sijiang and me to write a pledge to specify our obligations of caring her. Now the written evidence is in my hands, please have a look. It reads Sihai and I should hand over food and cash to my mother and it's my older brother Siren's job to take the stuff away from Li Village to my mother's living place. We have paid according to the pledge, while my mother sues me of not caring her, I cannot understand it. Isn't it a false accusation? In order to prove the point, I hope the court could conduct a thorough investigation.

According to my parents' will, I have lived apart from my parents since I got married, but I have shouldered my responsibility of supporting. In the era of collective labor, I earned

1,000 work-points for my parents every year. After the implementation of contracted-responsibility system, I provided them 600 yuan and 350 kilograms of grain (including 150 kilograms of corn, 200 kilograms of wheat) each year. This matter can be testified by Li Famin and Li Erjun. Furthermore, after my father passed away, I still gave my mother 600 yuan a year as usual, with 200 yuan given to her by Li Famin in October, 1988, and the rest 400 yuan by Li Tongmin, Li Xiaolu and Li Qingwen. I hope the court could investigate the matter and clarify the facts.

My mother argued that my wife and I had repeatedly beaten her in the past years, and my wife always scolded her. I have to say it is against the fact. I don't want to argue with her out of thin air, because the impartial judges will come to my village, and ask my neighbors to see if it is true. I hope right could be distinguished from wrong as soon as possible.

As for my mother's claims that she got no money from me, and was repeatedly scolded and beaten by me, such things were made up by her and were against the fact. Moreover, she accused me of saying "not allowing [her] to enter house, not going to loo kafter [her], and it is none of my business if [she] would remarry or not…." I've never said such words. If she insists, please ask her to find the witness. I've never expected my mother would fabricate lies and frame me to win the case. I believe the court will make judgment according to facts, and never end the case by idiosyncratic views. I sincerely hope judges could make detailed investigation and uphold justice for me.

My mother said I only visited her once a year in Spring Festival, but it doesn't fit the fact. Certainly, since I lived several kilometers away from her, I can neither accompany her throughout the day nor care about her in time. However, right after she moved to Gedatou Village, my wife and I visited her on the second day of lunar January. Unfortunately, when we entered her place, she scolded us unreasonably. As she is my mother, we submitted to her humiliation and came back home. Afterwards, I visited her twice to shoulder my obligation. But my mother still ignored us, and threatened to sue me at court. I hope judges would enquire Siren's neighbors in Gedatou Village, and then distinguish truth from falsehood. As to the claim that I hadn't offered her food, I cannot accept it, because the food I provided went through Siren's hands to my mother, how can this be described as not feeding her?

As to my brother Siren, I only want to talk about a bit of him. After my father died, he picked up my mother to his place and my mother was delighted to go to his home. This can also be explained as my brother did it for her property. Since my mother wanted to follow him, I had to respect her choice. But I didn't prohibit her from entering my home at Spring Festival. As a son, I didn't dare to have such thought, or to do such thing. I know my witnesses' words are stronger than my words. Please ask Li Tongmin, Li Xiaolu and Li Wenqing for evidence.

I believe the court would uphold justice and handle my mother's request reasonably. Finally, I ask the court to invite my mother and her witnesses to argue with me at court.

Li Sihai's Pleading

I don't know who should be responsible for my mother's indictment of "neither supporting the living nor burying the dead". For me, I've never said such words under any circumstance, and I have fulfilled my responsibility as a son to my best effort. My mother and Siren had drafted contract and asked other relatives in Gedatou Village as witnesses to make the contract valid. The contract included the following content: each son should visit the old at least six times throughout the year, and pay 125 kilograms of wheat, 50 kilograms of corn, and 300 yuan each year. If the old passes away, the two sons in Li Village should offer money to hold the funeral, with the funeral being held at Sijiang's house. I think it is enough to prove that my mother's criticism doesn't point towards me, as I followed my conscience and did what I thought was right.

As to my mother's three requirements, I believe the court would make a fair and reasonable judgment. As long as my brothers can accept it, so will I. Now I want to say something about my father's death. The complaint said I froze my father to death, but the fact goes

against it. At that time, I was busy building the new house, so my father moved to Sijiang's home. But Sijiang had a fight with his wife, so they asked my uncle to send my father to my place. Unfortunately, my house was half-built, damp and cold, with windows and doors had not been installed yet. Besides, I was busy with unloading pears at that time, so I told my uncle about my situation and it was not suitable to take my farther back home. I did this because I didn't want to harm my father, for if I had taken him back at that time, his bad health might be worsened. Therefore, I told them that I would pick up my father after I finished pear-picking and wheat-planting. At that time, my new house would be completely constructed, but regretfully, my uncle and Sijiang didn't take my advice and carried my seriously illed father to my place. At my wit's end, I had to use something to plug up holes in the wall, and burn coal stove to keep him warm. But unfortunately my father died. What I said above is the whole process of this matter.

There's a familial ethic principle in this mother's complaint and his son's pleadings, that is, the old should be kindly treated in any circumstance. Two points can be summarized: the parent's basic life should be guaranteed; each son should undertake his supporting obligation without preconditions.

It shows the court's respect of local customs, namely the customary law. This mother put an emphasis on how difficult she had been in bringing up her sons in the complaint, while sons did their utmost to argue that they had treated her well. Conflicts arose because their mother was too picky and unkind, which could be depicted as: "the elder is not like the elder, who didn't behave in an elder's way" (Guo 2001: 232). By describing their mother's behavior in such way, sons could avoid the public denouncement on the maltreatment to their mother, so as to de-stigmatize the image of an "unfilial son". In this way, they would not be deemed as breaking the two principles above.

Principle used to handle this case is the folk elder-supporting custom. It admits the function of customary law without examining the plaintiff's and defendant's liabilities details. In this way, it would be much easier to mediate the two parties, and could also gain public approval. The case was resolved in a single mediation, and the result of the conciliation was as follows.

(1) From January 1st in 1990, the plaintiff Zhang Jingmei lives and eats in Sijiang's home (in the northern two houses). Sijiang and Sihai take turns to provide the plaintiff with living place and food every year. When the son's turn to support the plaintiff comes, he is responsible for picking up the plaintiff from the previous one, as well as taking good care of the plaintiff.
(2) At the end of September of each year, Sijiang and Sihai should pay the plaintiff 500 yuan and 25 kilograms of good Snow pear.
(3) The plaintiff's medical expense is self-paid at ordinary times. Once in hospital, Sijiang and Sihai should pay the medical and living expenses equally.
(4) If the plaintiff passed away, her funeral should be held in Sijiang's home, with Sijiang and Sihai paying funeral expenses equally.
(5) Before January 1st in 1990, the plaintiff should give back 62.5 kilograms of wheat to Sijiang and Sihai respectively.
(6) Sijiang and Sihai cannot interfere with other relatives for visiting the plaintiff.
(7) Other matters are rejected by the court.

This mediation agreement is made by the customary law, that is, "elderly should be looked after properly by the son" (*laoyou ziyang*). Thus, the customary feedback supporting mode which was once on the brink of collapse gets rebuilt, and the rural social order is resumed. Here I have to reiterate that customs and laws are not irreconcilable. From the above analysis, we can see customs may penetrate into the operation of law, and the legal arbitration respects local customs. Undoubtedly, this mode of disputes resolution could be clearly found in the legal settlement of family division and old-supporting disputes.

The law is not an alien force distanced from the rural life. As a kind of representation of the state power, its operation is consistent with the customs and cultural principles. It can be further demonstrated in the next chapter on Marriage Law.

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Chapter 4
Marriage and Property Right

> *...there is no place in the world where a marriage could be entirely seen as the privacy of spouse themselves, in which no one else is allowed to take an interest.*
>
> Fei (1981: 33)

4.1 Engagement and Customs

Marriage is a kind of social tie by which a family is formed. Two persons form the relationship of husband and wife, and bear a child together. Through this mechanism, a triangular family structure is formed. Fei Xiaotong takes the relationship between husband and wife as a contractual relationship. Not only can it be applied to a monogamous society, but also found in the society of polyandry and polygamy, because all these societies are based on marriage relationship contract between two or more individuals (1981: 77).

As other contracts, the marriage contract also defines the conditions and principles by which a contract can be canceled. These conditions and principles are defined by social norms instead of individuals. What seems to be an unreasonable marriage arrangement nowadays could be taken for granted in ancient societies; and an approved marriage in our culture might be criticized in another society or culture. This is because principles of concluding or cancelling a marital contract may vary dramatically in different cultures.[1]

For example, divorcing with the wife, which is often called *chuqi* (sending away the wife) in ancient China, would not be severely criticized at that time. A husband had the power to divorce with his wife if she was in any of the following seven conditions, which were being un-filial to her parents-in-law, having no son, committing adultery, being jealous, having malignant disease, talking too much,

[1]In areas governed weakly by the central power, the establishment and dissolution of marital relation were directly related to both sides' social status. According to the investigation of Ma Rong in traditional Tibetan society, the marriage procedure of poor herdsman was extremely simple, so was marriage dissolution. Relatively speaking, marriages among rich herdsman or the noble were rather complicated (1996: 325–330).

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stealing (Tao and Ming 1994: 254–261). General speaking, kindred people of an abandoned wife have no reason to argue with the husband on divorce. When somebody asked for her condition, the kindred people of the wife would manage to answer with rhetoric words, such as *dagui* (great coming) or *laigui* (coming back), because people at that time believed that the female should in large part be responsible for the divorce (Dong 1995: 277–285).

In the eras of Imperial China, before a modern nation-state was established, the relationship between husband and wife was controlled by a lineage or a clan rather than the state law. The status of a wife, consequently, was affected by three kinds of power, including the power of ancestral temple or lineal orthodoxy, the power of her mother's brothers and father's sisters, and the power of her husband (Tao 1934: 48). Therefore there were cases in which the husband had to divorce with his beloved wife due to the conflict between his wife and his parents.[2] Nowadays those ideas have inevitably undergone some changes. At least in contemporary China, neither the husband nor the wife has the power to terminate the marriage relationship contract. The power was entrusted to an institutionalized authority, under which all divorce disputes would be resolved through mediation or adjudication. This institutional authority is obviously the national court.

As the proxy of law enforcement, what are the principles that the local court in rural area upholds when dealing with marital disputes? How do such principles match or be in conflict with the actual logics in rural society? This is the question I planed to focus on in this chapter. I will use divorce cases in this village found in court for analysis.

According to my survey, most marriages in this village are determined by parents. Once a child reaches two or three years old, the mother starts looking for a potential partner for marriage through chatting with others. If she finds a good match, she would ask a matchmaker to propose a marriage agreement with the target family. If the target family agrees, the mother of the child would exchange a *tie* (a note of marriage agreement) with her future daughter-in-law or son-in-law. *Tie* is a piece of red paper with the exact birth time (*shengchen bazi*) of the child and will be exchanged on a *jiri* (a lucky day according to lunar calendar). Both the girl's and the boy's exact birth time will be calculated to see if they fit a good match. There are many books teaching the calculation of birth time. Those who know how to calculate birth time are considered able men in the village. In Li Village, Li Qinggang was one of the able men from whom I had learned a lot about the village's customs, and when I was back to revisit the village in 2001, he had already passed away.

According to Li Qinggang, whether the boy fits the girl will be predicted through a traditional way called *mingli* (a rational of fate). He once showed me his own collected table notes whose title was "Tables of Good or Ill of the Marriage between

[2]One of the Chinese classics, *The Book of Rites* records "*Lineize*", which talks about ancient divorce system. It reads that "the husband may be very satisfied with his wife; but if his parents dissatisfy, he must get a divorce" (quoted from Tao 1934: 49).

a Man and a Woman" (*nannv nayinming peihun jixiong biao*).[3] It is written in a poetic form, with an expressive index of five elements, *jin* (metal), *mu* (wood), *shui* (water), *huo* (fire), and *tu* (earth), by which each person's fate could be told according to their born time. When it comes to the combination with their counterpart, it will be summarized as follows,

	Male wood female wood	
Wood plus wood equals forest	Wood will be broken at the advent of wind	Many quarrels between such pair of spouses
Children should be educated	They would support each other but won't be satisfied	They would be fallen into illness, weakness, and sadness
	Male wood female fire	
Wood and fire engender one another	Harmony would exist if they are obedient	Quarrels would happen frequently
Happiness would come if they are tolerant	A son born in the year of horse could have an official career	Husband will be long lived and wife will be virtuous
	Male wood female earth	
Earth nourishes wood	They would have a son	Husband and wife are on good terms
Basin will be filled with treasures	Their only regret will be their ill-fated son	Goodness will approach if they perfect their moral integrity
	Male wood female metal	
Metal overcomes wood and turns it into useless thing	They must be careful when they are walking	There must be thrift-centered
With compassion, they would have confidence in each other	Life is peaceful throughout the year	They would be happy with their descendants

(continued)

[3]Somebody may generalize this activity as "superstition", but, in fact, superstition should have some positive function besides its negative effects, which is a proposition proposed by the founder of social anthropology Frazer. The proposition considers that in some specific tribes and specific periods, superstition reinforces people's respect for marriage. Thereby it has made a great contribution in the establishment of a stricter gender-moral rule among married and unmarried people (Frazer 1988: 41). Modern law does not have such psychological force of constraint. If an individual violates the national Marriage Law, it won't arouse his psychological fear. However, superstition will resort to misfortunes in individual's life due to the offense of basic moral rules in marriage. For example, among Karens in Burma, if crops do not grow well in one or two years, people tend to relate it with "fornication" or "adultery". They may think that God is angry at them. Therefore, all people in village should offer sacrifice to lighten gods up. This is the superstitious logic, and it will maintain the social order. We cannot say it is non-rational, but it can be explained that the rationality in our society is different from that in theirs. Because in their real life, their logic is tenable, so are their behaviors.

(continued)

	Male wood female water	
Water irrigates wood	Water goes against wood when wood flows upon it	It should take more efforts to amass family property
They will be wealthy in the end	Crops will be high-yielding and livestock will grow well	They will have a few sons and daughters
	Male fire female wood	
It is half auspicious because their birth goes against with each other	Wife will be dominant while husband will be weak	They will work hard for fame and gain
They will trust each other	They will have several children	They will have no son if they spoil their virtue
	Male fire female fire	
Fire gets more strength from each other	There will be competition between the husband and wife	They will have family disputes
Each should make some concessions	Worries on calamity could be avoided	Sons should receive more education
	Male wood female earth	
Fire produces earth	They will live in harmony and happiness	Lifespan will be as long as pinetree
House will be full of wealth and treasures	They will have a lot of children	Both of them could get support

It is through the above tablets that the fortuneteller knows the fitness between the boy and the girl. If they suit each other, the boy's family will ask someone to write a proposal card, which always reads "Request the honor of your permission, with a golden promise, [name of the boy's father] with respect" (*Jing qiu: Jinnuo tianjuan* [name of the boy's father] *bai*). When the girl's family receives the proposal, they would recheck the birth time to make sure there is no conflict between them. Then they will write a marriage agreement card in reply, which is written "With the honor of your request: Our respected dependents of affinity, [name of the girl's father] with our respect" (*Jin zun: Taiming yinjuan* [name of the girl's father] *bai*). The cards would be exchanged and kept in the householders' hands. When the children reach the marriageable age, the male side would consult with a matchmaker on the engagement, which is called *xiatie* (sending the card). In return, after receiving the male's card, the female side would write *xietie* (card of thanks) to express their gratitudes. The male's *xiatie* would like: "Request the honor of your clear permission, with a golden promise, [Name of the boy's father] with respect". The female's *xietie* reads: "With the honor of your request: Our respected dependents of affinity, [Name of the girl's father] with our respect". After that, the male side would prepare a banquet to invite the matchmaker and some relatives in order to fix the wedding date.

Every village has at least one person to write marriage cards (*huntie*), and Li Qinggang was that person in Li Village. He kept a *Manual Book of Cards* (*Tiepu*),

which includes various kinds of cards, such as cards for child-bear, funeral rites, and the aged's birthday.

In rural China, betrothal gift (*caili*) given to the female side is always a must. However, in Li Village, the female side only asks 500 to 2,000 yuan from the bridegroom's family as a symbolic ritual at the day of engagement, without any betrothal gift. At the wedding day, the kindred of the bride would send a dowry worth nearly 10,000 yuan to her. It's said that girls whose family send expensive dowry would avoid her husband family's bully and tease, so it would be beneficial for her. Generally speaking, dowry is presented by the female side at around 10 o'clock in the morning before the wedding day. When they arrive, the senders would put firecrackers to inform the male side, and then the groom's relatives would come out to receive the dowry. Meanwhile, all villagers of the groom would go to see the lively scene of dowry carrying, they would focus on the number and specific items of the dowry, and make comments on the economic condition of the bride. Such information would be immediately spread throughout the village.

The wedding ceremony is hilarious and funny. Before the sunrise, the bridegroom will be accompanied by several villagers to go to the bride's home by car. When they arrive, the bride would stall for time to denote her unwillingness to leave her parents' home. It is also a time for relatives of both sides to know each other. Then the kindred of the bride would daub black ashes of the pot on the groom's face, and allow him to take the bride from her home. Afterwards, the bride would be carried on the groom's back out of her parental house, and leave for the groom's home by car. As soon as cars enter the groom's village, firecracker would be put, and the groom's relatives would come to welcome the bride and her relatives. Participants involved in those rites are relatives within a degree of closeness with the bridegroom in term of bloodline, and the term for describing this degree of closeness in Chinese is *wufu*. Certainly, everyone from the bridegroom's village would be welcomed. The newlyweds would be occupied with rituals in the whole day, such as *baitiandi* (to worship the Heaven and the Earth) and *rendaxiao* (to identify relatives in order), thus their spousal relation could be recognized by others. It is sure that such recognition is set by public rituals, rather than written papers. In this way, the new wife will also be known to all the villigers. After completing those rituals, relatives of both sides will be invited to attend the banquet, and treated with hospitality.

4.2 Disputes Caused by Marriage

Getting a divorce is not easy in Li Village. Quarrels between couples are seen to be normal. Some couples may threaten to divorce, but eventually return to peace after various mediations. Once the marital contradiction is inextricable, the couple could do nothing but divorce. Then the court will intervene, and initiate a kind of mediation named *shuohe*. Therefore, one of the following results will turn out: either the husband and wife reconcile, or the court adjudicates their divorce. In my

discussion, I will refer the former result as *shuohe* (mediate a settlement), and the latter is named *panli* (to divorce through judicial decision).

Shuohe (Mediate a Settlement)

When two families become relatives by marriage, there is a set of rites that maintains their relationship from the time they first met until the couple gets married. However, when the couple could not live together anymore due to a certain reason, the effect of rites disappears. The relationship turns into a bargaining process over the property rights they jointly hold.

Once contradiction arises, the wife usually goes back to her parents' home, during this period, the kindred of both sides would engage to restore their relationship. If one of the couple still feels hopeless for the marriage, the cadres of the Village Mediation Committee (*cunmin tiaojie weiyuanhui*, VMC) will mediate the dispute. Nevertheless, a cadre of the Committee told me that what they can do is actually limited, because if the couple's conflict is on small-scale, they can be convinced to reconcile under the neighbors' and cadres' mediation; if one side determines to have a divorce, only the court can mediate. Villagers in disputes rarely go to court for resolution, while those in marital troubles always sue to divorce. Because once the warm-hearted persuaders in the village find the problem is hard to resolve, they would be hands-off.

If one of the couple feels unable to live together with the other anymore, he or she may appeal to the court. Then the court would notify the defendant to prepare the reply, and start a series of proceedings (*zuogongzuo*, which means to try to persuade the couple to reconcile). *Zuogongzuo* won't be conducted by the legal institution alone, civil authorities like the elders and clan leaders, as well as the political agency Village Mediation Committee would also participate in. And it could be held in court, at home or in the office. If it succeeds, the couple would be on good terms again; however, if it fails, they would face the most difficult part in the divorce—dividing their property. Although the division plan would be specified on the court's decision,[4] but for most cases, it's difficult to determine the property ownership. And those who disagree on the court's decision mostly think the court has divided the property unfairly. But the difficulty that the court encounters is that the property rights would not be clearly specified in a written form when the couple was getting married. Therefore the court would be unable to investigate and verify the belonging of each property. For example, the wife claimed that she had brought ten clothes with her as dowry, while the husband denied such thing. Property disputes in a marriage such as this one have shown their difference from other types of property disputes.

[4]According to a record of a divorce case in 1950s in Zhao County Archives, its verdict on property was as follows: "Take your own belongings. The man should give the woman a set of quilt and mattress. 16 yuan of child support fees should be paid by the man twice, on lunar August 15th and May 5th respectively; 8 yuan each time." (Quoted from *Divorce Files in Zhao County Archives,* Vol. 2, July 1956). This kind of verdict can be seen in many divorce decrees.

From the above, we will know establishing a marriage relationship is extremely complex in agrarian society. Just as Fei Xiaotong mentioned, since the rights and responsibilities of husband and wife are recognized by villagers through gift exchange, marriage establishing is actually a process of public display rather than a private issue (1981). When the dowry of the bride is sent to the groom's village, it must be witnessed by the villagers, so the specific items wouldn't be written down. But when a divorce happens, the court has to judge the belonging of the property right based on verifiable evidence, in which case a written document would be the strongest evidence, yet neither party could provide such thing.

It is evident that the villager and the nation have a conflicting view towards property. The law of the state uses evidence to prove property rights, but the transfer of property rights in a marriage is realized through public rituals. The process of property transfer can be seen as an exchange of mutual trust through the exchange of *xiaotie* and *datie*. The exchange of *xiaotie* by the matchmaker signifies both sides' recognition of the marriage arrangement, while *datie* would be exchanged several years later to fix the engagement. Then it comes to the wedding day, rituals would be held to bind these two families together and form a new small family. In folks' eyes, anything regarding "division" should not be mentioned when the two families are forming a "union", so the bride should not ask the groom to write something to verify items of her dowry. Both sides know clearly what belongs to the groom and what is offered by the bride. When a divorced-to-be wife is asked by the court to fill a dowry inventory, she can easily list all the items, but have difficulty in finding witnesses to verify her words. As a result, the judge could do nothing but to adjudicate according to those "verified evidence".

There was a divorce dispute in 1990 at Li Village. The plaintiff is Shi Yuncai, who came from Dongzhuang Village of Xiezhuang Town, and was 38 years old at the time. Her husband Feng Jingshan, as the defendant, was a Li villager. Shi sent a request to the local court "to ask for a permission of divorce with her husband", which included: (1) permit their divorce; (2) let her raise the younger son and the younger daughter; (3) equally divide family property; (4) equally divide the contracted land and trees. Her request greatly shocked Li villagers, because in their mind, this couple had lived together for 14 years and was a good match. While we can see some reasons from Shi's complaint,

> The defendant married me in 1978 through formal registration, and then we gave births to four children. The first one is a girl named Feng Wenqing, 12 years old now. The second is a boy named Feng Wenguang, 10 years old. Next is Feng Wenyong, an 8-year-old boy. And the youngest is a girl, Feng Wenjing, who is 6 years old. We knew little about each other before our marriage because the marriage was arranged by our parents. Since the marriage, I havn't got much affection with my husband, and my relation with my mother-in-law is so-so. In the first few years, I could live together with him. But later, we often fell into conflicts over household chores, which deteriorated my relationship with my mother-in-law. My husband often acted upon his mother's words, and beat and scolded me at times. In recent years, my mother-in-law and sisters-in-law often had trouble with me, and made false charges against me, which made my husband suspect me of doing something wrong without any reason. Afterwards, my husband ran away from home for six days. When he came back, my father was called by someone else to resolve the dispute, but in the

conversation, my mother-in-law threw a bowl on to my father and he left with anger. All those incidents had intensified the existing contradictions and broke the domestic peace into pieces. I had no more choice but to go to my parents' home in April 9th, however, my husband took no notice and turned his back on my leaving, which declaimed the final ending of our marriage. As a result, I brought up the suit to the court to divorce with my husband, and to let me bring up my younger son and younger daughter.

In the 14 years of our matrimony, we had bought the following items for domestic use: a Mudan-brand sewing machine, a washing machine with two buckets, a Huanyu-brand color television in 20 in. screen, a tractor, an electric motor, a trailer, a pesticide pump, a pesticide bucket, a bicycle. My husband and I also built three east-rooms and one entrance hall, as well as five north-rooms. My husband, my children and I live in two of the rooms, and his mother live in the rest three rooms. We have four persons' contracted land and pear trees, 5,000 yuan in our saving account and about 1,100 yuan in our checking account. Last year, we stored 75 boxes of pears (equally 1,900 yuan) in Shi Wenshe's refrigeration room in Dongzhuang Village, and 56 boxes of pears (nearly 1,600 yuan) in Shi Buqun's refrigeration room. Shi Wenshe and Shi Buqun haven't paid us yet, and the IOUs are kept in my husband's hands. As to me, I kept our IOU for foreign trade, which testifies that we have sent 69 boxes but not get paid, as well as a receipt which reads we have received 350 yuan from Feng Qingyue in Li Village. Besides, we have also some crafts and farm tools (an inventory list is attached). I request to divide the above property with the defendant equally.

This marital dispute results from the contradiction between daughter-in-law and mother-in-law. On September 3rd, Zhao Cunzhi, the judge responsible of this case in the township court met the defendant Feng Jingshan, explained the Article 76 and Article 77 in the Civil Procedure Law to him according to the legal procedures, and asked him to write an Answer and submit it within 15 days. On October 15th, a month and a half after the last meeting, Zhao asked Shi and Feng to come to the court, but Feng hadn't submitted his written answer yet, so Zhao asked him about the reason. Feng replied that his father-in-law had mediated successfully, therefore, he felt not necessary to write such thing. His action was warned by Zhao as a voluntary renounce of the right to defend himself. Then Zhao talked with both of them, as part of investigation and testimony, as well as court mediation. But it ended without a result, and Shi as the plaintiff insisted on divorcing. Two days later, Zhao did his second mediation with Shi, and their dialogue was as follows,

Judge: After consideration, I am now on behalf of the court to mediate the case again. Could you withdraw your request of divorce and go back to live a good life as you once did before on the basis of mutual understanding? Please talk about your suggestions or conditions.

Shi: After so much work you have done, I'd like to ask some requests as preconditions taking considerations of my children: (1) I would not accept his sisters, and Feng must cut his relationship with his sisters; (2) His mother must return home before night; (3) Feng should not go out at night; (4) Let his mother live in the two rooms and I live in those three; (5) Ask his mother to sit together with my father for a while (it means to apologize to her father). No other suggestions.

Judge: Some of your quests are reasonable, some are not. For example, asking him not to accept his sisters is neither reasonable nor legal. Please go back

and think again on how to live your life. We will talk about it tomorrow. Let us see the written record, is it correct?

Shi: I have read it. It is right. Shi Yuncai (fingerprint)

After two days, the third mediation was conducted as below,

Judge: I hope both of you can think about the family first, you two have married for many years and have four children, please avoid divorce because of anger. I don't think the divorce would solve the problem, and hope you can understand and tolerate each other and be reconciled (Details are not shown here). Now you can express your opinions or requests respectively.

Shi: I had borne myriads of hardship in your family, and had brought up our children. But, incited by your mother, you tried to get me angry, and to defame me. Besides, your mother even threw a bowl on to my father. Every time when came some guests, your mother would say bad words about me, which made me so ashamed.

Feng: I don't think divorce is good for our children. We should live our own life, and avoid getting angry anymore. I would like to correct my faults.

Judge: Both of you have said some. Please think about how to live in the future.

Feng: I would correct my bad behaviors and live in peace with my wife. Shi had suffered a lot these years, for children's sake, please forgive me.

Shi: It is no use if you say something but don't mean it in your heart. How will you do in the future?

Feng: I will control my temper and avoid bickering with you. It's not easy for you to bring up the kids, so I will work hard for you and them! I will strive to make our family sweet and contribute myself to our kids. To double my love and protection to you, that's what I want to do.

Shi: I persist in divorcing.

Judge: We stop here today. I hope you will seriously think about it and we will talk about what course to follow tomorrow. Please read the written record, is it correct?

Shi: I have read it. Shi Yuncai (fingerprint)

Feng: All is right. Feng Jingshan (fingerprint)

The court had mediated this dispute for three times, and both sides reached the agreement in the last time. From the third mediation to signing the agreement, Zhao had mediated many times at both sides' home. Of course, the Village Mediation Committee and the elders had also participated in the mediation. Here the legal authority does not function alone, but works with the political power and civil authority. Conflicts between the couple thus were invisible from the court records. After this mediation, this couple regained peace, and the domestic order was recovered. Their gratitude can be seen in the last court mediation,

Judge: I have done a lot of work on both of you for a long time, together with the Village Mediation Committee and the elders in your kindred. I'm glad that you two reconciled with each other in the end. Based on mutual understanding, I have sent Shi to Li Village on the 22nd of this month,

hope you will love, protect and tolerate each other in the future, and strive for the whole family. Wish your family happiness and may all your dreams come true. Do you have anything else to say?

Shi: Many thanks to the court for helping my family out of trouble, also for the efforts you have made for us. Through the court's help, I realized my previous thoughts and actions were wrong, I promise to consult with my husband and do not quarrel with him anymore. For my four children, I will try to live a good life.

Feng: I want to thank the court for saving us out of divorce. Without your help, my family would be broken. In the future, I will make efforts with my wife to live well.

Judge: Good. Hope you will keep your words, understand and compromise with each other, live a good life, support your parents, and raise your children. You need to pay 50 yuan as legal fees.

Shi: I have already paid it. It can be seen as payment for both of us.

Feng: Whether she pays or I pay is the same.

Shi had been in her parent's family for four months before the case was brought to court. It seems that returning the parental home is a strategy of females to confront domestic crisis, and is seen as a way to seek support (Freedman 1966: 60). Based on my own fieldwork, I think it implies another symbolic meaning, that is, to make the male's family condemned by others. One of the families that I've visited can be used as an instance: the lady returned her home because she was annoyed by her husband, then her neighbor visited her mother-in-law and said: "What's the matter? Let your son say something good to his wife and get her back home!" Then the lady was taken back home by her husband. It is said many marital disputes are successfully mediated in this way. Besides, for woman who wants to appeal to the court, home-returning could prevent her from her husband's disturbance, and would allow her to consult a lawyer or to find someone to make the court decision benefiting her.

We know how a marital dispute is mediated in the above case. In this case, the plaintiff and the defendant asked the court as the third party to intervene. As each party plays his own role, their purposes are different. Shi Yuncai, the plaintiff, didn't want to divorce actually but tried to get rid of her sister-in-law and mother-in-law. However, her purpose was beyond the legal scope, so she had to sue for divorce and let the legal institution mediate. There are three points supporting her divorce request: (1) cutting off the relationship with her husband's sisters; (2) the core family is more important; (3) the domestic property is shared by the husband and wife and should be divided equally when the bond is broken. Feng Jingshan, Shi's husband, as the defendant would make concessions to win his wife back, and his logics are as follows: (1) family is the most important; (2) the domestic property is shared by husband and wife, but is uneasy to divide clearly when it comes to divorce. As a third party, the judge mediated the dispute according to the state law, and adhered to the following principles: (1) it is important to maintain a family; (2) a dispute must be handled reasonably and legally (here

"reasonably" means consisting with customs while "legally" means abiding by articles of law); (3) if the male doesn't insist on divorce, maintaining the existed marriage would be a better choice.

Surely, all of the three sides had followed a common principle, that is, to maintain the family steady, which serves as the basis upon which the mediation can succeed. As a representative of legal authority, the judge would use moral persuasion to maintain the marriage, so as to incite their imagination for the future happiness.

***Panli* (to divorce by judicial decision)**

The case mentioned above was successfully resolved through court mediation in which the practiced principle coincided with folk customs. However, when it comes to those mediated unsuccessfully, the state law and customs have different definition on the personal property, which can be seen in the case below.

In 1991, the township court received an indictment written by Li Dazhu, a Li Villager, who asked for terminating his "illegal cohabiting relation" with Yao Shenghua. Yao came from Gedatou Village, another village in the pear zone. This case is actually a divorce case, but they had not registered their marriage before they cohabited, for they didn't reach the legal age of marriage at that time. Now I will present the original documents of this case, such as Li's defense, Yao's answer, and the judge's mediation between them. First is Li's defense:

> Shenghua and I lost the mutual affection not long after we got married, and we always quarrel with each other. Since the marriage, she has never made, sewn, or washed clothes for me. And after my family division with my old brother, she didn't do fieldwork and also ruined or wasted things with anger. If I said something about this, she would be furious, and act in an intensified manner. In May, her residence registration was moved to my village, but it made our condition from bad to worse: she didn't say a word to me, even stopped cooking and wore an unhappy face. At the end of June, her mother came and wrangled in the street over the issue of residence registration. In early August, her father took several people to destroy my door and tried to snatch something; her two brothers even attempted to hit me with bricks. We can never live together, so I sue for divorce.

Yao Shenghua then sent an answer as reply:

> Li Dazhu and I had a good relationship in the early years of our marriage. A year later, our daughter was born, since he had a son with his ex-wife, we two have two kids to bring up. I am busy in taking care of them, and sometimes quarrel with him, which seems normal to me. If he said that I didn't want to live with him, why did I move my residence to his family this February? Besides, the reason for my mother's quarrel was that my residence registration had been kept by his family for several months instead of being sent to the Village Committee.
>
> In these three years after marriage, our agricultural income has been over 5,000 yuan per person per year. All the income is managed by my parents-in-law, and we two cannot touch even a coin. As we had been divided from the big family, why our money should be managed by them? In my opinion, it's we two that should face all of the problems jointly in our life. And I always wonder why I can't buy some clothes for my kid? Why I can't go into my own house? Why should they criticize on me?

> I agree to divorce with Li, on condition that my property should be guaranteed and unruined. My property includes: a washing machine, a sewing machine, a bicycle, a recorder, a television, a sofa, an electric fan, a pair of cabinet, a television cabinet, a framework of boxes, two pairs of chairs, a big round table, two wash basins, a press pot, a thermos flask, a desk calendar clock, a set of clock table, a pair of mirrors, a big square mirror, three plates, two tea pots, a pair of warm-keeping cup, a pair of tea-cup, two quilts, four sets of clothes, and four sweaters. Four cloth-wrappers, a mosquito net, a summer sleeping mat, a set of cotton-padded jacket, a sweat-trousers, eight meters color-serge, ten machine-woven-cloth-made facing of quilt, two silk-made facing of quilt, two satin-made facing of quilt, a sofa, a pair of bed sheet, a pair of sheet, a pair of wooden surround, a pair of wall surround, a quilt-covering sheet, three pieces of scarf, two pieces of towel, and two pieces of blue cloth.
>
> Our domestic property has reached more than 38,000 yuan (including the money from family division) within three years, half of which should be distributed to me. And I request 5,000 yuan for having fostered his son. If our daughter would be adjudicated to me, I'll ask for child support fees. If he accepts the above conditions, I would agree to divorce.

From Yao's reply, we know this couple went on well at the beginning, but the continuing escalated tension between the daughter-in-law and mother-in-law damaged their marital relationship. How did the court mediate this dispute? Here I would list the detailed legal records. As to this case, both the plaintiff and the defendant wanted to overstate their property belongings to the best they can, while the judge must work according to the principle of making facts clear. So the judge Zhang Shunping talked thrice with the plaintiff Li Dazhu, and five times with the defendant Yao Shenghua. Furthermore, Zhang inquired the plaintiff's father Li Zhenzhong once, as well as two witnesses of Yao Haijun. In the following, I would respectively present two conversations between Zhang and Li, one was to know Li's first marriage while the other was to make clear about Yao's dowry. For convenience, I list the two talks together,

Judge: Why you sue to the court?
Li: I want to divorce with Yao Shenghua.
Judge: For what?
Li: We have nothing in common.
Judge: When did you get married?
Li: In the winter of 1987. Zeng Yun, a villager in Yaojiazhuang Village, was our matchmaker.
Judge: Do you have kids?
Li: We have a daughter named Li Mei who is two years old now.
Judge: Do you live separately from Yao Shenghua?
Li: We have lived apart for many years.
Judge: Have you done a family division?
Li: Yes, before the wheat harvest in 1988.
Judge: How much money have you gained since the family division?
Li: In 1988, we earned 2,600 yuan and saved 1,000 yuan in bank; in 1989, we earned 3,000 yuan and saved 2,000 yuan; this year, we sold pears to the cold storage, and we will get 2,000 yuan as payment, but they haven't paid us yet.

Judge: How much money have you saved after your marriage with Yao?
Li: 3,000 yuan in total.
Judge: Have you purchased something after marriage?
Li: No.
Judge: Is your marriage with Yao your first marriage?
Li: No, my first marriage was with Ren Daqiao form Xiezhuang Village, but I got divorced, then I married Yao. I have been divided with my big family for five years, and I have been living together with Yao for three years.
Judge: Who will take care of your children if you are divorced?
Li: If she wants the child, she can take care of her; if she won't, I will take care of her myself.
Judge: Did you have economic exchange with Yao's parental family before or after your marriage?
Li: None.
Judge: What were in her dowry?
Li: A pair of big wardrobe, a TV cabinet, a three-person sofa, a Haitang-brand washing machine with single bucket, a Feiren-brand sewing machine, a recorder, a floor electric fan, a desk clock, a round table, four chairs, a clock cover, flowers, a desk lamp, a air pressure bottle, a thermos flask, two wash basins, two sets of cotton quilt, a mosquito net, that's all.
Judge: Are these in your home now?
Li: Yes.

Below are the dialogues conducted in five times between judge and the defendant Yao:

The First Dialogue

Judge: Were there a bike and a television in your dowry when you married Li?
Yao: Yes.
Judge: Where is the bike?
Yao: At my home, I am using it.
Judge: What's the brand of the television? What's the size? And where is it?
Yao: It is the Huanyu brand and 18 inches, and is in Li Dazhu's house.
Judge: Can you prove that the television is yours?
Yao: This television was bought by myself from Jiashizhuang Village, and was sent to Li Village by Jinzhen and Chengjun on the wedding day, and neither of them is my relative.
Judge: Li Dazhu wants to divorce with you, do you agree?
Yao: No, I don't.
Judge: Why?
Yao: I think we have affection. But he has a bad habit of gambling, and he is fed up with my persuasion, so he wants a divorce.
Judge: What did you buy after your marriage?
Yao: An 80-motorcycle (Li Xun in Li Village can be the witness) and a cloth rack.

Judge: Do you have bank savings after your marriage?
Yao: Yes, we have about 30,000 yuan in the village bank, but I don't know the exact amount.
Judge: Do you have receipts of your bank savings?
Yao: No, I don't.

The Second Dialogue

Judge: Was the 18-*inch color television moved to Li's house on your wedding day?*
Yao: Yes, with my other dowries.
Judge: Did you often use the television?
Yao: Yes, certainly.
Judge: Where was the television ordinarily placed in your room?
Yao: It was often placed on the table of our room, because it couldn't be put into the television cabinet.
Judge: Who sent the television at the wedding?
Yao: Haijun and Jinzhen.
Judge: Can they testify that it's yours?
Yao: I don't know.

The Third Dialogue

Judge: Was the television included in your dowary?
Yao: No.
Judge: Why did you lie to the court?
Yao: Because I don't want to get divorced.
Judge: When did you buy the motorcycle?
Yao: Dazhu bought it before our marriage, now he has sold it to his father.
Judge: Did you buy a motorcycle after your marriage?
Yao: No, I didn't.

The Fourth Dialogue

Judge: When did you marry Li?
Yao: In the winter of 1986.
Judge: When did you have the family division?
Yao: In the lunar December of that year.
Judge: What's your common property?
Yao: We saved 5,000 yuan in 1987, and 4,500 yuan in 1989, but I don't know about this year.
Judge: When and where did you save the money in 1987 to 1989? Do you have any evidence?
Yao: I know little about it, and have no evidence. Because the three bank savings were saved under Li's name.
Judge: Do you have other property?

Yao: Li had bought a motorcycle before we married, and we sold it to his father at the price of 5,000 yuan. But his father hasn't paid us yet. At the time of family division, we were told to get 12,000 yuan to build houses, but we didn't get the money. And Li's brother should have paid us 2,500 yuan, which has not been paid yet. Besides those, no other property should be claimed.
Judge: Did you have any economic transaction with Li's family before or after your marriage?
Yao: No.
Judge: How many children do you have?
Yao: I gave birth to a daughter, and she lives with Li at present.
Judge: What would you do with your kid if you are divorced?
Yao: You can adjudicate the kid according to the law. If I have to bring up the kid, Li must pay 100 yuan per month as the child support fees.

The Fifth Dialogue

Judge: Would it be better if you don't divorce with Li?
Yao: No, I don't think our marriage could be maintained any longer.
Judge: Do you want to add anything?
Yao: No.
Judge: Please check the records and sign you name if there is no error.

The following is the dialogue between the judge and the plaintiff Li:

Judge: On December 10th, you said you earned 2,600 yuan and saved 1000 yuan in bank in 1988, and got 3,000 yuan while saved 2,000 yuan in 1989. This year, you would earn 2,000 yuan, but you havn't got the monety. Where is the saved money in 1988 and 1989 now?
Li: I gave the saved 1,000 yuan in 1988 to Ren Daqiao when we divorced. Then in 1989, I withdrew 700 yuan from the bank savings and gave it to my sister as a wedding gift. Now only 1,300 yuan is saved in the Credit Cooperative (xinyongshe). As to the money earned this year, minus the tree production tax and other costs, about 1,000 yuan would be kept.
Judge: When did you divorce with Ren?
Li: In 1987.
Judge: Why you gave money to Ren in 1988?
Li: I previously had borrowed money from her family, so it was used to repay her family.
Judge: Please check the records and sign your name if there is no error.
Li: OK.

The judge went to the Credit Cooperative in Li Village to inquire Li Dazhu's father, Li Zhenzhong, who worked in the bank and managed Li's account.

Judge: We will investigate some issues on the divorce case between Li Dazhu and Yao Shenghua. Hope you would respond us strictly according to the facts, otherwise, you will be charged of legal responsibility, do you understand?
Li's father: Sure.
Judge: How much money does Li save in the Credit Cooperative? And when?
Li's father: He saved 1,300 yuan on October 22nd, 1990.
Judge: How many deposits did he save in the Credit Cooperative?
Li's father: Just one.
Judge: What's your relationship with Li Dazhu?
Li's father: I'm his father.

Afterwards, the judge visited Yao Haijun on the following questions in Yaojiazhuang Village:

Judge: We are trying to investigate some details on the divorce case of Yao Shenghua and Li Dazhu. You should respond to our questions on the actual situation, otherwise you will be charged of legal responsibility.
Yao Haijun: OK.
Judge: Did you send Yao's dowry at their wedding day?
Yao Haijun: No, I didn't.
Judge: Have you visited Li after their marriage?
Yao Haijun: No.
Judge: What's your relationship with Yao Shenghua and Li Dazhu?
Yao Haijun: Just normal friends.

Obviously, the divorce case is gradually turned into a property dispute, and Yao was concentrated on nothing but property. To make it clear, the judge investigated the items of Yao's dowry and this couple's common property, especially the evidence that had legal validity.

As to the plaintiff and the defendant, both of them tried to maximize his or her interest. Therefore, Li had understated the common property, while Yao had lied and made up some false facts like the television was hers. Because they knew it was impossible for the judge to find out the legal facts. Although the judge inquired witnesses, such as Li's father, but the testimony couldn't bear a closer analysis. Finally, the judge had to draw his conclusion according to the testified facts, and it went as follows:

> The court believes that the defendant hadn't reached the marriageable age when they got married. Though it is a de facto marriage, considering that they have lived separately for a long time and they have a strong willing to divorce, their marriage dissolution should be handled according to the law. As the plaintiff has to bring up his son of his ex-wife, their daughter Li Mei should be brought up by the defendant, and the plaintiff should pay part of the child support fees. The defendant had demand on dividing the property of 38,000 yuan and a motorcycle, as there is no prove, such claims are rejected. It's investigated that the couple have 1,300 yuan jointly, which should be divided equally. After being mediated for

many times, each side insists his own opinion. We, therefore, according to the Marriage Law of the People's Republic of China, give our decision based on the Article 25, the first item of Article 30, and the Article 31:

1. To dissolve the marriage relationship between the plaintiff and defendant.
2. Their daughter Li Mei should be brought up by the defendant, and the plaintiff must pay the defendant 150 yuan as child support fees before October 1st of every year until Li Mei can live independently.
3. The 1,300 yuan deposit would be equally divided between the plaintiff and the defendant, so the plaintiff must give the defendant 650 yuan within 15 days as soon as the court decision becomes effective.
4. Other disputes are rejected.

According to the decision, several basic principles are followed by the judge, including: (1) based on the testified facts to divide the property; (2) dividing the property equally with testified facts; (3) their children should be fostered by both sides; (4) the law does not take un-testified facts into consideration.

Three of the principles are related to the "testified facts", which is a main characteristic of modern state law, it means the authoritative judge must draw his decision on the evidences provided by the plaintiff and the defendant. However, as to the definition of "testified facts", civil customs and the state law have different opinions. When those in rural society claim their own property, they usually fail to find evidence to support their claim. Therefore, they have to accept the final legal decision. Some may dissatisfy with the result and appeal to a higher court, such as a city court, but normally they will receive a reply reads: "The original court decision is maintained". The higher court does so for two main reasons: first is to give sufficient respect for the lower court by which a harmonious relationship could be maintained; second is to save energy and time in those cases, because a further investigation in property would meet more difficulties.

Some misjudged cases would be unavoidable in the rural area, for the "testified facts" requested by the legal authority are uneasy to find in reality. To make the case favorable to them, villagers would use their personal connections to influence the legal process. In Li Village, I met a middle-aged man named Li Ruiyun, and he wanted to sue at the expense of his house.

Author: Why would you want to sell your house?
Ruiyun: Don't you need money or gifts to appeal? Money is worth nothing. I would feel ashamed if the appeal failed.
Author: Could you win the appeal if the gifts were sent?
Ruiyun: Don't you think that they would say something for you if you sent gifts?
Author: Are there many cases in which people send gifts?
Ruiyun: You would feel unconfident if you didn't do that.
Author: If both sides sent gifts, which side would win?
Ruiyun: It depends on whose gift is more valuable and whose connection is stronger.

The interview has left me a deep impression, and such talks always occur in my interviews with those involved in divorce cases. To verify the facts it demands a large investment of money, time, labor and energy, and it is obviously difficult for either a court or a villager to clarify facts, especially the "testified facts". Many legal researches demonstrate that the judges in local courts are always bounded up with the local economics and social relationship, and cannot make the decision leaving the "testified facts" aside (He 1995: 255–61). As a result, the judge can't do nothing but make a subjective decision based on the specific circumstances. The state law defines abstractly the concept of private property, so it depends on the judge to make interpretation on what belongs to each party, which in turn reveals the judge's subjectivity.

However, the concept of private property is clear in civil custom. Through public rituals like sending dowry at the wedding day, people know exactly the ownership of each item. The entire marital preparative process would be initiated when the groom is going to get married, and then his family would build a new house and purchase some new furniture for him. On the day before wedding, the bride's dowry would be sent to the groom's village, and would be moved from a tractor into the bridal bedroom by the bride's kindred. As all of this would be observed and witnessed by villagers, it's unnecessary to write down a property list or a formal claim. Once this couple couldn't live together anymore, the female could take back her dowry and no one would disagree on it.

But when the divorce is sued in court, the "testified facts" must be proved to define the property. On this occasion, if both sides abide by customs, their property would be divided easily; in contrast, if one side breaks the custom and denies the other side's ownership, the division would meet difficulty. For such a case, the court would avoid the problem of property right, or make the "testified facts" as an excuse to seek more benefits for their acquaintance.

We can clearly see the conflict between the state law and civil customs in the above cases. In any case, the judge would like to follow the principle of "verifying simple legal facts", but the property relationship is actually complicated and hard to be verified, which vividly explains the proverb "even an upright official will have difficulty resolving a family dispute".

4.3 The Practice of Mediation

Taking the Revolution of 1911 (the Chinese bourgeois democratic revolution led by Sun Yat-sen which overthrew Qing Dynasty) as a dividing point, the former legislation emphasizes the principles of *qichu* (seven conditions allowing a divorce), *sanbuchu* (three conditions prohibiting a divorce), and *yijue* (compulsory divorce). It seems that *qichu* gives the male an initiative to divorce, but it is strictly limited.

Influenced by *sanbuchu*, a male is likely unable to divorce no matter how unhappy he feels in the marriage. Therefore, the marriage is stabilized due to these constraints. Even if the marriage has deteriorated to the degree that a divorce can be justified by the traditional principles, it would remain as a private matter in which the court won't intervene. The husband would write a divorce agreement and let the wife go back to her parents' home with her dowry. Only when the couple meets tough problems, would they turn to the court. Even in the courtroom, the county official would think highly of the domestic peace and find a fair and reasonable way that could be accepted by both.

Looking back, the modern Chinese society is revolution-oriented, and the custom that did not match the interest group's value would be abolished as "bad habits", then the self-reflective revolution would be initiated, which made the so-called new custom replace the traditional one. When the new custom revealed its radical shortcomings, the traditional one would regain its legitimacy and marginalize the new trend, which is called the "pendulum model" of social changes by anthropologists (Zhao 1998). In terms of marital disputes, its reciprocating trait is obvious. And every modification to the Marriage Law since 1949 can be seen as a recurring response to the revolutionary logic. I will not elaborate on this significant historical change, instead, I want to claim that the social context has inevitably influenced the judge's decision in divorce cases and on the "testified facts", and it can be seen in the above cases in Li Village.

As to my investigated cases, they are recorded literally in the court, and include complete legal proceedings. The number of divorce cases found in Li Village since 1949 is twelve, from which I selected two and analyzed them above.

Table 4.1 shows the statistics of the twelve divorce cases. It may not be able to reflect any causality, but one obvious thing is that mediation is a legal procedure for the court to handle divorce cases. Except the Case 4 and Case 5 in which the problem was solved within a month because of the nature of arranged marriage, the rest cases took more than a month to resolve. The Case 9, for example, had taken 257 days from the suing date to the final decision. These numbers give us an impression that judges are inclined to mediate instead of passing the judgement directly at court. In a sense, a judgement is a kind of official transcript of the mediation result. Namely, a judge does not give his decision simply by the Marriage Law, instead, he always consult and negotiate with the plaintiff and the defendant.

Table 4.1 Twelve divorce cases in Li village (1965–1993)

Case no.	Year of the case	Gender of plaintiff	Accused causes	Final result	Time of dispute resolution (day)
Case 1	1994	Male	Cohabit illegal; absent feeling between each other	Relieving the relationship of illegal cohabiting	96
Case 2	1965	Female	No mutual communications	Divorce with agreement	43
Case 3	1969	Male	Wife is selfish and the couple doesn't have any mutual affection.	Divorce with agreement	166
Case 4	1966	Female	Arranged marriage, be on bad terms	Divorce with agreement	1
Case 5	1966	Male	Arrange marriage, be on bad terms	Divorce with agreement	20
Case 6	1966	Female	be on bad terms	Divorce with agreement	116
Case 7	1966	Male	No mutual communications	Divorce with agreement	210
Case 8	1990	Female	Worsen of the relationship between mother-in-law and daughter-in-law	Reconciled each other	112
Case 9	1988	Female	No bases of affection	Divorce with agreement	122
Case 10	1993	Male	Without marial affection	Relieving the relationship of illegal cohabiting	60
Case 11	1990	Male	Be on bad terms and often quarrel each other.	Relieving the relationship of marriage	257
Case 12	1992	Female	Marital relationship broken	Divorce by court decision	78

The judge is more likely to take the role of "middleman" or "peacemaker" in civil disputes resolving, rather than a representative of the state power. And the questions posed by the judge are as below (Table 4.2).

A divorce case in rural China would go through the following procedures: firstly, the plaintiff should bring an introduction letter issued by the Village Committee and an indictment to the court. Then the defendant is informed and requested by the court to write a reply, which is followed by the investigation in dowry, personal property and common property. Afterwards, the court hearings will be practised for several times. Finally, the court decision will be sent to the spouses in the form of "Civil Mediation Letter".

Let's take the Case 1 as an example. The plaintiff is a Li Villager, who lived with his wife after holding their wedding publicly. Nevertheless, they did not register

Table 4.2 Questions asked by the judge on a divorce case

Judge's questions to a plaintiff	What brings you to here (court)?
	When did you live together (or married) with the defendant?
	Do you have children?
	Who is living with those children?
	Did the defendant have property left at your place?
	Please wait for court decision after the defendant sends his reply, read carefully the record and print your fingerprints here if nothing is wrong.
Judge's questions to a defendant	When did you live together (or married) with the plaintiff?
	Do you have children?
	Were you betrothed?
	When did you separate with your spouse?
	Did the plaintiff (if the defendant is a wife) send betrothal gifts to you?
	Do you want to take your children, yes or no?
	Where is your dowry (if the defendant is a wife)?
	Where are your residence, land, and trees?
	I'll give you the statements of the plaintiff now, go home and write down your reply, then send it back with an inventory list of your dowry, do you understand?
	Now we should learn the Articles of Legislation Law on Rights, Responsibility, and the System of Evading together (Article 45, 50, 51, 52). Are you clear?

their marriage in the County Marriage Registration Office. In the villagers' eyes, their marriage is normal, but it is illegal or named "illegally cohabiting" according to the national Marriage Law. The plaintiff said that he had lived with his wife for four years without affection and couldn't live with her anymore. Under his demand, the Village Committee issued him an introduction letter. Then he wrote an indictment on August 14th, 1994, which included three requests: (1) to relieve his illegal cohabitation relation with his wife; (2) to retrieve 1,000 yuan which was asked as the previous betrothal gifts through the matchmaker; (3) to pay their daughter child support fees instead of bringing her up. He also cited some articles of Marriage Law in his indictment, and his "facts and reasons of the divorce" are shown as follows:

> I didn't know the defendant until the winter of 1990 when i married her through the matchmaker Zhao Xiangguo in Gaozhuang Village and Gaiduan in Li Village. And we began to illegally cohabit since the lunar January 10th of 1992. On November 22th, our daughter Zhuozhuo was born. I sue to relieve the relationship of illegal cohabitation because we don't have affection and couldn't live together anymore. At the same time, according to the *Marriage Law of People's Republic of China, since we had broken the article because of illegal cohabitation, our relationship should be relieved*

On August 23rd, the judge came to the plaintiff's home and made an "Examination Record" (*Kanyan bilu*). It is a detailed record in which even petty properties, such as photo pictures, were carefully listed.[5] Four days later, a "Property Record" (Caichan jiaojie bilu) was sent to the court by the plaintiff, which was a list of all the domestic property confirmed by the defendant and their daughter, and then it would be verified by the defendant. The whole process was supervised by the judge.

This divorce case had gone through the court hearing for three times, respectively on October 17th, October 18th, and November 18th. The court hearing on October 18th was held for the defendant to verbally reply for the plaintiff's indictment. Ten days later, the defendant's written Answer was received by the

[5]As Murdock said, property was one of the extremely important factors to maintain the family stability. Once a marriage relationship was ended or broken, the ownership of property kept in memory would be aroused (Murdock 1996: 258–266). The property inquest list in the No.1 case can verify this point.

Record base on inquest: Location: Li's home at Li Village.
Inspection Personnel: Geng Qunyan, Chen Guoxin. Attendee: Li.

Articles of Zhao stored at Li's home include: one suit of combination sideboard (five sets), one writing desk, one TV cabinet, one cupboard, five sets of round-the-corner sofa, one sewing machine of Bee Brand, one lockstitch of Tiangong Brand, one parallel-bars washing machine of Friendship Brand, one twenty-inch color TV of Yellow River Brand, one recording machine of Panda Brand (three sets), one floor-standing fan of Snowflake Brand, one quartz clock, one aggravated bicycle of Dove Brand, two toweling coverlet, two silk satins, one red and one green quilt, six base plates, one squared woolen upper garment, one yellow dress, one purple upper garment, one red long underwear pants, one white upper garment, two white shirts, two pink shirts, one red vest, two green upper garments, one jeans, one yellow shirt, one red cotton-padded clothes, one yellow upper garment, one red and one white upper long underwear, two white sweaters, one yellow long underwear, one stripe-squared upper long underwear, one green shorts, seven pairs of pants, six underpants, one vest, two red sofa covers, 5.5-m^2 crash, one washbasin rack, four bed sheets, four pillows, four pillow covers, one bed sheet, one mosquito net, one bed-mat for summer, two quilt covers, one quilt sheet, two bumpers, a suit of sofa cover (plaintiff said the husband's kindred bought it), one sewing machine cover, one lockstitch cover, two towels, one radio cover, four small mattress pads, one small quilt (plaintiff said the husband's kindred bought it), two soup bowls, two washtubs, one hanger, one table lamp, one dinner table, one lamp, one tea table, four chairs (two were broken), two thermos bottles, one vacuum pot, one electric soldering iron, two tooth glasses, one small tea mug, one tea set (six), two big plates, one small plate, two candy boxes, two mirrors, two vases (with flowers), one kettle, one ashtray, one food box, one comb, one bag, one knitted bag, one toy panda, one pair of leather shoes, one scissors, one tape and ruler, one curtain, two packages, six-chi bedside cloth, one red long woolen underwear, six children cotton-padded clothes, one yellow upper long underwear, one scarf, ten single layer for children, a set of teapot (with six cups), one artificial leather cloth, five quilt covers, one tea box, one photo. All the articles are not broken.

The above record is correct. Li (fingerprint).

Table 4.3 Comparison between requirements of the parties and results of the court decision

	Requirements of the parties	Results of court decision
Plaintiff	1. To relieve the illegal cohabiting relation	1. As the plaintiff and defendant would like to relieve the relationship of illegal cohabiting, it can be severed according to the law
	2. To retrieve 1000 yuan as the costs of betrothal gifts that were given to the defendant	2. The defendant would retrieve her dowry left in plaintiff's house
	3. To pay the daughter child support fees without feeding her;	3. Their daughter Li Zhuozhuo will live with the defendant
Defendant	1. To compensate 1300 yuan which was borrowed from my parents in the lunar October of 1992	4. The plaintiff should pay the defendant 10,000 yuan as the child support fees, pear gains, and loan interest
	2. To pay me 3000 yuan for my hard work in the past two years	5. Other requests are rejected. The legal fee is 50 yuan in total, which should be paid by the plaintiff
	3. To pay me 3000 yuan as compensation for the pear sale of this year, and the remaining 9 years of contracted trees would be charged by myself	
	4. I won't bring up our daughter, but I can pay for the child support fees. The plaintiff should also compensate me 500 yuan for the fees of my daughter who will livein my parents' home after the divorce	
	5. To pay all my broken dowries	

court. At last, the court issued a "Civil Mediation Letter of the People's Court of Zhao County". Since the civil mediation letter did not specify the date, we assume it the same with the date of the last court hearing. The whole process had taken 96 days. During the long period, what is the fundamental difference between the judge's mediation and the parties' requests? We can see it from the Table 4.3.

In this case, the judge functions as a go-mediate, who made a trade-off between the plaintiff and the defendant. Subjectivity seems to play a more significant role than reason. But the legal fee is relatively expensive. No wonder villagers prefer civil mediation to court decision.

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Chapter 5
Reciprocity and Power

Each community has, therefore, a weapon for the enforcement of its rights: reciprocity.

Malinowski (1926: 23)

5.1 Economic Disputes

The stories that were probably most often chatted about in streets were those related to debt, specifically those cases that were sent to court. Based on the court-used taxis for legal cases, I have classified the economic disputes in Li Village into two main types and 13 sub-types, and their frequency is showed in Table 5.1.[1] There are 127 cases in the past 47 years, in which 55 cases are about debt, making up 43.3% of the total.

[1]Disputes solved by the National Court between 1948–1995 in Li Village.

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1948-32	Civil case	1948	Ren Huimin, Liu Xingkui; Zhao County	Li Xinduo, Wang Jingxi; Li Village	Debt	
1949-1	Civil case	1949	Song Shuzhi; Li Village	Shi Mingtai; Dongzhuang Village	Debt	
1949-116	Civil case	1949	Song Shuzhi; Li Village	Zhao Quanfu, Shi Jingfu; Dongzhuang Village	Articles ownership	
1949-157	Civil case	1949	Jia Sijun; Xiaohaozhuang Village	Li Xiaowu; Li Village	Divorce	
1949-269	Civil case	1949	Daughter of Li Erdan; Li Village	Wang Xiaoju; Xiezhuang Village	Divorce	Mediation
1949-307	Civil case	1949	Li Bing; Li Village	Jia Shengxi; Chang Xin	Divorce	
1950-37	Criminal case	1950		Li Shunfa; Li Village	Steal	

(continued)

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(continued)

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1950-52	Criminal case	1950		Li Lansuo; Li Village	Confirmed thief	Three-year imprisonment
1950-52	Criminal case	1950		Li Heizi; Li Village	Confirmed thief	Three-year imprisonment
1951-89	Criminal case	1951		Zhang Hujiao; Li Village	A17 counterrevolutionary murder	Fifteen-year imprisonment
1951-150	Criminal case	1951		Li Qiufu; Li Village	Landlord counterattack	Three-and-half-year imprisonment
1951-198	Criminal case	1951		Li Lankui; Li Village	Counterrevolutionary	Four-year imprisonment
1951-212	Criminal case	1951		Wang Huanshu; Li Village	Murder	Death penalty
1954-180	Civil case	1954	Li Sumei; Li Village	Bai Xiaochen; Gezi	Divorce	
1954-375	Civil case	1954	Zhang Liannv; Guangzong Lizhi Village	Li Wuchen; Li Village	Divorce	
1954-452	Civil case	1954	Feng Jinghuai; Li Village	Geng Xinju; Xiaoyou	Divorce	Divorce decree
1954-488	Civil case	1954	Li Huansheng; Xianmenlou	Li Wentai; Li Village	Divorce	
1955-151	Civil case	1955	Li Meihua; Li Village	Yao Shengqiao; Yaojiazhuang Village	Divorce	
1955-291	Civil case	1955	Wang Zhizhang; Li Village	Geng Dani; Xiaoyou	Divorce	
1955-307	Civil case	1955	Li Jinggai; Caozhuang Village	Li Erchen; Li Village	Divorce	
1955-322	Civil case	1955	Li Jilin; Li Village	Zhao Qinhua; Li Village	Divorce	
1955-457	Civil case	1955	Li Shenghua; Li Village	Ren Genkui; Xiezhuang Village	Divorce	
1955-97	Criminal case	1955		Li Fengkui; Li Village	E02 stealing	Nine-year imprisonment
1956-109	Criminal case	1956		Li Laobian; Li Village	Counterrevolutionary	Three-year imprisonment
1956-81	Civil case	1956	Su Meixiu; Li Village	Li Baogen; Li Village	Divorce	
1957-18	Civil case	1957	Li Xiulian; Li Village	Zhang Qingwen; Fanzhuang Village	Divorce	
1957-22	Civil case	1957	Ling Chunrui; Da'an Village	Li Yinxiang; Li Village	Divorce	Reconciliation
1957-35	Civil case	1957	Sun Sheng; Li Village	Li Daqing, Li Hunong; Li Village	Debt	
1958-24	Criminal case	1958		Wang Shuangsheng; Li Village	G07 Offenses against marriage	One-and-half-year imprisonment
1960-48	Criminal case	1960		Li Tonghuai; Li Village	D06 rape young female	Ten-year imprisonment
1964-19	Criminal case	1964		Li Changzao; Li Village	G03 violation of the PLA man's marriage	One-year imprisonment
1965-194	Criminal case	1965		Li Lansuo; Li Village	Stealing	Eight-year imprisonment

(continued)

(continued)

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
				Shi Xiaoqun; Li Village	Stealing	Four-year imprisonment
1965-200	Criminal case	1965		Li Lansuo	Stealing	Eight-year imprisonment
1966-62	Civil case	1966	Li Meiqiao; Li Village	Li Zhensuo; Fanzhuang Village	Divorce	Reconciliation
1966-224	Civil case	1966	Zheng Zhongyi; Li Village	Li Shuqiao; Li Village	Divorce	
1966-83	Civil case	1966	Li Fengju; Qiandama Village	Feng Duchen; Li Village	Divorce	
1966-104	Civil case	1966	Li Xinque; Li Village	Duan Rongjiang; Da'an Village	Divorce	
1966-113	Civil case	1966	Liu Zhengfang; Tianzhuang Village	Li Qingfang; Li Village	Divorce	
1968-11	Civil case	1968	Li Genxi; Li Village	Feng Jinglu; Li Village	Divorce	Lawsuit withdrawal
1969-55	Civil case	1969	Li Qingxian; Li Village	Gao Suhuan; Gao Village	Divorce	
1969-27	Civil case	1969	Gu Shuhua; Handan	Li Kaiyin; Li Village	Divorce	
1970-6	Civil case	1970	Li Qingchuan; Li Village	Li Lingqiao; Li Village	Divorce	
1973-26	Civil case	1973	Fan Genxu; Fanzhuang Village	Li Chunsu; Li Village	Divorce	Mediation
1973-48	Civil case	1973	Li Ruike; Li Village	An Yuejiu; Anjiazhuang Village	Divorce	Reconciliation
1973-67	Civil case	1973	Li Shuzhong; Li Village	Cheng Zhongbao; Dadongping Village	Divorce	Judgment
1973-110	Civil case	1973	Shi Qinrui; Dongzhuang Village	Li Qingchuan; Li Village	Divorce	Mediation
1979-14	Criminal case	1979		Li Binsuo; Li Village	Murder	Death penalty; three-year probation
1980-31	Criminal case	1980		Li Jianmin; Li Village	Traffic accident	Two-year imprisonment, three-year probation
1983-6	Administrative economy	1983	Seventh Group; Li Village	Eighth Grouo; Gedatou Village	Arrearage	Mediation
1983-33	Civil case	1983	Song Yueping; Anjiazhuang Village	Li Jianjun; Li Village	Divorce	Mediation
1984-80	Civil case	1984	Ren Jidun; Xiezhuang Village	Li Yinrui; Li Village	Divorce	Mediation
1984-98	Civil case	1984	Li Haishuan; Li Village	Wang Junxiao; Anjiazhuang Village	Arrearage	Mediation
1984-183	Civil case	1984	Gao Wenzeng; Dasizhuang Village	Li Rongsu; Li Village	Divorce	Mediation

(continued)

(continued)

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1985-170	Civil case	1985	Li Guangsheng; Li Village	Li Meisheng; Li Village	Arrearage	Mediation
1986-51	Administrative economy	1986	Li Village Committee	County-Town-Village Business Administration	Loan	Mediation
1986-156	Civil case	1986	Li Guangjin; Li Village	Li Erjun; Li Village	Arrearage	Mediation
1986-159	Civil case	1986	Li Jianguo; Li Village	Liu Guojun; Caozhuang Village	Arrearage	Mediation
1987-5	Civil case	1987	An Xi Road; Xinzhai Store Cement Plant	Li Zengshui; Li Village	Compensation	
1987-26	Criminal case	1987		Li Shuanping; Li Village	Harm	Lawsuit withdrawal
1987-69	Civil case	1987	Wang Yingshan, Li Zengmin; Li Village	Han Village; Sujiatin Village Committee	Debt	
1988-34	Administrative economy	1988	Li suoyin; Li Village	Li Dongliang, Wu Qingzhen, Li Lihui, Li Guofen, Yao Huandong; Gedatou Village		
1988-40	Administrative economy	1988	Packaging Decoration Plant of City Shi	Li Qingshuang; Li Village	Arrearage	Lawsuit withdrawal
1988-63	Civil case	1988	Cao Tongfang; Li Village	Zhang Zhihui; Xiezhuang Village	Divorce	Mediation
1988-239	Civil case	1988	Li Shuzi; Li Village	Li Qingke; Li Village	Homestead	Judge
1988-325	Civil case	1988	Li Jianguo; Li Village	Geng Sujun; Xiaoyou	Arrearage	Mediation
1988-338	Civil case	1988	Cao Congjun; Li Village	Zhang Shucheng; Shahe River Store	Divorce	Mediation
1988-364	Civil case	1988	Li Haishuan; Li Village	Geng Sujun; Xiaoyou, Zhang Guobin; Changxinying	Arrearage	Mediation
1988-383	Civil case	1988	Shi Xiaoqun; Li Village	Li Jianmin, Li Jjishuan; Li Village	Homestead dispute	Mediation
1989-53	Civil case	1989	Li Shuwei; Li Village	Zheng Zhongsheng; Dahaozhuang	Arrearage	Mediation
1989-112	Civil case	1989	Wang Tongxi, Cao Hongrui; Li Village	Wang Jibin; Li Village	Maintenance dispute	Mediation
1989-157	Civil case	1989	Zhao Qingzhen; Li Village	Yan Qunyang; Mazhuang Village	Arrearage	Mediation
1989-187	Civil case	1989	Li Zhongyuan; Dasizhuang Village	Li Ronggui; Li Village	Arrearage	Mediation
1989-211	Civil case	1989	Li Zhongqi; Dasizhuang Village	Li Yonggui; Li Village	Arrearage	Mediation

(continued)

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File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1989-232	Civil case	1989	Zhao Qingzhen; Li Village	Lu Shuanzhen; Dahaozhuang Village	Arrearage	Mediation
1989-333	Civil case	1989	Li Dongmin; Li Village	Liu Chunyang; Yaojiazhuang Village	Arrearage	Judgment
1989-345	Civil case	1989	Zhao Qingzhen; Li Village	Zheng Subin; Dahaozhuang Village	Debt	Mediation
1989-385	Civil case	1989	Li Ruishen; Li Village	Yao Guangyan; Yaojiazhuang Village	Arrearage	Mediation
1989-522	Civil case	1989	Li Ruishen; Li Village	Li Sanhuan; Yaojiazhuang Village	Arrearage	Mediation
1989-529	Civil case	1989	Li Ruishen; Li Village	Li Shizhen; Gedatou Village	Arrearage	Mediation
1989-565	Civil case	1989	Zhao Qingzhen; Li Village	Zheng Zhongliang; Dahaozhuang Village	Arrearage	Mediation
1989-650	Civil case	1989	Li Qingke; Li Village	Li Village Committee, (Li Shuzi; Li Village)	Homestead dispute	Judgment
1989-694	Civil case	1989	Li Ruishen; Li Village	Li Shiying; Gedatou Village	Arrearage	Mediation
1989-712	Civil case	1989	Li Zhencai; Li Village	Fan Village People's Government	Refuse administrative penalty	Lawsuit withdrawal
1989-720	Civil case	1989	Tian Jingmei; Li Village	Li Junjiang, Li Junhai; Li Village	Support	Mediation
1989-722	Civil case	1989	Li Meisheng; Li Village	Li Zengshou; Li Village	Arrearage	Mediation
1989-727	Civil case	1989	Li Shenghuai; Li Village	Fan Village People's Government	Refuse administrative penalty	Lawsuit withdrawal
1989-732	Civil case	1989	Shi Xiaoqun; Li Village	Li Shiying; Gedatou Village	Arrearage	Mediation
1990-41	Administrative economy	1990	Packaging Decoration Plant of Boxiang County	Li Ruishen; Li Village	Arrearage dispute	Judgment
1990-49	Administrative economy	1990	Li Wenjie; Li Village	Printery Retail Salesroom of Zhao County	Arrearage	Mediation
1990-54	Criminal case	1990		Li Jinyan; Li Village	Harm	Lawsuit withdrawal
1990-323	Civil case	1990	Clip Packaging Materials Plant of City Shi	Li Shuquan; Li Village	Arrearage	Mediation
1990-349	Civil case	1990	An Jingke; Anjiazhuang Village	Li Zhenfang; Li Village	Arrearage	Lawsuit withdrawal
1990-372	Civil case	1990	Zheng Guoping; Dahaozhuang Village	Li Minshe; Li Village	Divorce	Mediation
1990-409	Civil case	1990	Qinghua Carton Plant of Xingtang County	Li Jianguo; Li Village	Overdue obligations to suppliers	Mediation
1990-421	Civil case	1990	Yin Qingle; Li Village	Li Zhidong, Li Heizi, Li Ruibin, Wang Chunzhen, Xu Bingchen; Li Village	Economic dispute	

(continued)

(continued)

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1990-485	Civil case	1990	Shi Ruisu; Dongzhuang Village	Feng Jingbin; Li Village	Divorce	Mediation
1991-162	Civil case	1991	Li Village	Zhang Shengzu; Li Village	Inheritance	Lawsuit withdrawal
1991-34	Criminal case	1991		Li Mengji; Li Village	Mild harm	Lawsuit withdrawal
1991-260	Civil case	1991	Packaging Production Plant of Boxiang County	Li Jichen, Li Ruixing; Li Village	Arrearage	Lawsuit withdrawal
1991-343	Civil case	1991	Feng Jingjun; Li Village	Tian Shenghui; Ying'enpu Village	Arrearage	Mediation
1991-426	Civil case	1991	Packaging Printing Plant of Zhao County	Packaging Plant of Li Village	Arrearage	Judgment
1991-488	Civil case	1991	Shi Xiaoqun; Li Village	Li Qingshan; Gedatou Village	Arrearage	Judgment
1991-501	Civil case	1991	Guo Xianghui, Meng Zhenkui; Yanghu North Gate	Li Jianguo; Li Village	Arrearage	Mediation
1991-503	Civil case	1991	Li Shuanping; Li Village	Yao Shengguo; Yaojiazhuang Village	Divorce	Judgment
1991-511	Civil case	1991	Shi City Yongchang industrial corporation carton plant	Li Ruitian; Li Village	Arrearage	Judgment
1992-38	Civil case	1992	Li Ruilin; Li Village	Li Xingwei; Gedatou Village, Li Dongwei; Li Village	Business dispute	Judgment
1992-55	Criminal case	1992		Li Weiqiang; Li Village	Intentional injury	Three-year prisonment
1992-62	Administrative economy	1992	Carton Plant of Li Village	Zheng Yingjun, Zheng Wensheng; Dahaozhuang Village	Direct purchase contract	Judgment
1992-79	Civil case	1992	Zhang Siba; Northeast Ying Village	Li Zhenguo; Li Village, Ren Jichen; Xiezhuang	Arrearage	Judgment
1992-90	Civil case	1992	Yin Qingle; Li Village	Qi Mengzhen; Li Village	Illegal detention	Lawsuit withdrawal
1992-96	Civil case	1992	Wang Guangjun; Anbaishe Village	Zheng Guangzhi; Li Village	Arrearage	Lawsuit withdrawal
1992-186	Civil case	1992	Wang Juezhen; Li Village	Jia Qingyi; Gaojiazhuang Village	Divorce	Judgment
1992-219	Civil case	1992	Li Qinghua, Wang Jingzhu; Li Village	Li Guoyan; Li Village, Anxi Road, Anwang Village	Arrearage	Judgment
1993-143	Civil case	1993	An Xianjun; Anjiazhuang Village	Feng Yuerui; Li Village	Relieve concubinage	

(continued)

I will introduce one case that I investigated, in which Mi Zhijun was the debtor. Mi was about 50 years old when I met him and he owed most villagers money. According to the elders, Mi was the descendant of beggars from Pingshan County, Hebei Province, and his lineage was a small group in the village. Mi had two sons, and lived with one of them for two years by turns. He was living with his second son when I interviewed him, whose home was located in the east part of Li Village. Most villagers hated him and even ignored him when they met Mi. Every time when he was mentioned, people would repeatedly tell how his truck had been

(continued)

File number	Type	Year	Plaintiff (name and village)	Defendant (name and village)	Cause	Solution
1994-9	Civil case	1994	Li Tuilin; Li Village	Huang Xiuqing; Xibailu Gaocheng Town	Divorce	Judgment
1994-13	Administrative economy	1994	Zhao Zongqiao; Xianqian Village	Li Xianbin; Li Village	Loan	Mediation
1994-33	Administrative economy	1994	Li Huisuo; Li Village	Zhang Genhui; Changxin Village	Arrearage	Mediation
1994-436	Civil case	1994	Li Pinghai; Li Village	Fruit Stop of Zhao County in Li Village (third party: Xia Chunqing, Beijing Fédération Aéronautique)	Arrearage	
1994-447	Civil case	1994	Li Yanjun; Li Village	Zhao Jiancai; Zhangjiazhuang Village	Relieve concubinage	Mediation
1994-513	Civil case	1994	Li Qunsuo; Li Village	Li Jingshun; Li Village	Default pear money	Lawsuit withdrawal
1995-4	Administrative economy	1995	Carton Plant of Li Village	Ling Guanghui; Liu Erbeng; Da'an Village	Arrearage	Lawsuit withdrawal
1995-39	Civil case	1995	Water Conservancy Bureau of Zhao County	An Tongxu; Li Village	Arrearage	Mediation
1995-41	Civil case	1995	Water Conservancy Bureau of Zhao County	Li Yimin; Li Village	Arrearage	Mediation
1995-42	Civil case	1995	Water Conservancy Bureau of Zhao County	Li Shuanzhu; Li Village	Arrearage	Mediation
1995-54	Civil case	1995	Water Conservancy Bureau of Zhao County	Li Zengxu; Li Village	Arrearage	Mediation
1995-382	Civil case	1995	Wang Guanghua; Xiaowangzhuang in Zaozhuang, Shandong Province	Li Yurui; Li Village	Illegal detention	Lawsuit withdrawal

The original source Zhao County court archive department

Table 5.1 Disputes in Li Village from 1948 to 1995

Type	Year	1948–1949	1950–1969	1970–1979	1980–1989	1990–1995	Total
Civil disputes	Maintenance				2	1	3
	Divorce	15	8	5	5	7	40
	Debt	4			24	27	55
	Refusal to administrative punishment				3		3
	Farmland and homestead				3		3
	Unlawful detention					2	2
	Theft	4	3				7
Criminal cases	Rape		1				1
	Traffic accidents				1		1
	Damage				1	3	4
	Homicide	1		1			2
	Marriage interference	1	1				2
	Counterrevolution	4					4
Total		29	13	6	39	40	127

The original source Register book of civil cases in Zhao county people's court (1948–1995)

smashed by someone in secret and nobody knew who did it even today. In the eyes of locals, it was a retribution for a villain.

The real reason for Mi was excluded by other villagers is that he hadn't paid dozens of families for pear purchasing. For punishing this kind of people, villagers would sue them to the court or simply isolate them.

This dispute took place in 1989. Yin Qingshui, cousin of Mi Zhijun's wife, asked Mi to purchase pears for him. Mi informed villagers of this acquisition and the pear purchasing price through village loudspeaker. Then 34 households sent their pears to his home, but got unpaid in the end. According to an indictment, Mi said that he had no idea about the credit notes. Later, he said he had sold the pears at a loss, so he didn't have money to pay the villagers. After this, when these villagers found him and asked for money, Mi said it had nothing to do with him, because it was Yin that had purchased pears and owed them money, and what he had done was only offering information for both sides, villagers should ask money from Yin. However, villagers considered that they had sent pears to Mi's home because of Mi (who villagers knew and was their fellow villagers). And it was because of Mi's credit that they had not claimed money immediately. If Yin had no relation with Mi, those sent pears to Mi would have followed the rule "no pay, no goods". Irrigated by his excuses, some villagers took Mi's tractor and color TV away to make up for

their loss. Mi did not prevent them from doing so, but wrote an appeal to the court after that. Below is the record of the dialogue between the judge and the five defendants:

Judge: Is it true that you took a tractor and a color TV out of Mi Zhijun's house?
Defendants: Yes
Judge: Why did you do that?
Defendants: In October 1989, Mi Zhijun used the village speaker to inform us of the pear-purchasing. On hearing this message, we sent pears to his house without asking for money at that moment. But when we asked money later, he refused to pay us and proposed us to take away his stuff. He thought by doing so his partner would be called by court.
Judge: If he agreed, why he is suing you?
Defendants: If he didn't sue us, they wouldn't get the matter straight.
Judge: How many partners did he have? Do you know where do they come from?
Defendants: We just know Yin Qingshui was one shareholder, who lives in Beizhongma Village of Beizhongma Town.
Judge: What if Mi wasn't one of the shareholders?
Defendants: That is impossible. We gave Yin pears without asking for money immediately only because Mi is our acquaintance. Generally, if we didn't know the collector, we would never let him go without paying.
Judge: What's your evidence for having given pears to Yin?
Plaintiff: Yin Qingshui had written an IOU.
Judge: How many pears did you give? How much should you get?
Plaintiff: The exact number of pears and the price he offered wasn't mentioned on the IOU. It only wrote that Yin owes Li Heizi 680 yuan, Li Zhidong 1050 yuan, Li Ruibin 4540 yuan, Wang Jisuo 1300 yuan and Feng Bingchen 840 yuan.
Judge: Come back and send Mi's tractor and TV to court this afternoon, are you clear?
Defendants: OK.
Judge: It is illegal to possess other's asset without permission. Please do not do that again, otherwise you will face legal sanction.
Defendants: We won't do it again

In my view, the defendants were very clear about their rights as debtees: the debter must repay his debt, and no one can be exempted from this obligation. From my interview with the main defendant, I suggest that the logic of debtees on this dispute was that: they sent their pears to Mi without claiming money back at the same time, because Mi was their village fellow. Had it only been Yin, they would apply the rule "no pay, no goods" to strangers. Therefore, it didn't matter to them who had signed on the IOU note, but the reason why they had taken the risk was that they trusted Mi. So, Mi should be responsible for this debt; and if the debt was not repaid, it was their right to take away Mi's asset for compensation. But the court

had a different logic: it is simply illegal to appropriate other people's private property, and the debter should be exactly the one who had signed on the IOU, namely Yin instead of Mi.

Similar to those mutual contradictory ideas about property mentioned in divorce cases, the customary concept of property is once again in conflict with that defined by the national law. In local custom, after I "give" you something, part of your asset has already included the part you should "pay" me back. If you cannot take your responsibility, I can take something from your asset according to the reciprocity of local custom otherwise you would be punished by the customary law.

All the villagers considered that it was reasonable for them to take away Mi's property, for he had been on debt for a long time. In contrast, the court dealt it unidirectionally, not considering the property right in transactions, but stressed the inviolability of personal property. In fact, once a person is involved in the "giving-receiving-reciprocating" cycle, his belongings won't fully belong to him any more (Mauss 1990). Only two solutions can be practiced to settle the matter: giving out something as compensation voluntarily, or involuntarily surrendering part of one's own property under the pressure of customs. Hence, in village community where the reciprocity principle works, property does not belong to individual, but to interpersonal relationship. The conflict between customs and law is finally reflected in the court's judgment. Finally, this case was ended with reconciliation: the plaintiff paid the costs, and the defendants returned tractor and TV. A conflict resulted from the conceptual differential was thus handled at last.

Later, defendants told me that they stopped suing Mi Zhijun because he had bribed the court; so the debts that Mi owed them would never be back. Though litigation had not worked, villagers chose other ways to punish him, such as ignoring him, smashing his belongings, and excluding him from the social circle in the village. As a result, Mi was despised and could not hold up his head in the village.

Under the clear "giving-paying back" relationship between debtee and debtor, once one side breaks the reciprocal rule, the balanced relationship will be in danger. In the above case, debtees make up one party, with debtor Mi being the counterpart, and nobody would give up his right. This relationship is quite simple, because in some cases, debtors may use tactics to arouse contradictions among debtees, so as to make benefits for themselves.

There is a case caused by woods and house-building, with Li Erdan, Li Sanhuan as plaintiffs, Li Daxing as defendant. Here is the plaintiffs' argument:

> We contracted with Li Daxing to develop the 400-meter long riverbank in the southwest of Dadui Village, by which there were 87 aspens in total. In the first month of 1986, we all agreed to transfer 33 aspens to Li Ronggui, Li Mengshi and the other 13 villagers from western of the village. In 1987, Li Daxing dug up 4 aspens without paying us. Thus only 50 aspens were left by the river bank.
>
> In the first month of 1988, for house-building, Li Daxing discussed with Li Sanhuai and Li Erdan to sell our aspens to his construction crew. At that time, he said he would pay at a price of 40 yuan per tree, which accounted to 2,000 yuan. According to this price, we two should have gotten 1,333.32 yuan respectively after Li Daxing's house being built up. However, in the eve of Spring Festival of this year, when we asked Li Daxing for

money, he postponed the repayment date to the next year, namely the autumn of 1989. When we found him again, he changed his saying and said we should ask the construction crew for money. But we knew clearly that Li Daxing was in charge of this matter from the beginning to the end, which had no business with the construction crew. As we couldn't get our money back, we appealed to the court to investigate this matter and seek justice for us.

From the above argument, we know three parties are involved in this case, plaintiffs, defendant and the construction crew. The plaintiffs argued that the defendant had appropriated the corporate property, while the defendant said it was made up by the plaintiffs and he did not get any money.

When I visited Li Daxing, his two-floor building had been completely built. He was 46 years old, short and slow-minded, and lived with his wife, his parents and four children, totally eight people. His wife came from Da'an Village, 12 km away from Li Village. His wife said that before this matter, Li was on bad terms with the two plaintiffs, because Li's grandfather had a bad relationship with the plaintiff's, and Li's father was adopted by a Li villager, so Li is essentially an outsider that has no kinship in this village. So the grievance between Li and the plaintiffs was deep, and both sides always quarreled with each other. Li can read but cannot write, so he asked someone else to write the following reply on his behalf:

The plaintiffs had distorted the truth in this case. In lunar January 1988, An Xiwu contracted to build three domestic buildings for Daxing, Yuntian and Ruizhi. As three of us started to build houses together, we needed lots of wood. So the construction worker Haichun asked me if we could find some. I found Erdan and Sanhuai and discussed with them about selling aspens to the crew. At first, Erdan and Sanhuai offered a price, 45 yuan per tree, which was denied by Haichun. In the end, they two agreed to sell at the price of 40 yuan per tree. When the construction workers were digging the trees, I was on the spot with Sanhuai and Erdan's son, which can be verified by Haichun, and the trees were used for building the three domestic houses.

It's wrong to say trees were dug by me, because the tree-cutting was done by workers. It's incorrect to say that I set the price, because it was Sanhuai and Erdan did so. Besides, I didn't use all trees, as they were shared three families. Since the construction crew bought the aspens, and the worker Haichun issued the IOU, the plaintiffs should ask the construction crew for money instead of me.

From this, we know four sides were complicatedly entangled in this case. The construction crew led by An Xiwu was hired to build houses for Daxing, Yuntian and Ruizhi. An Xiwu is said to be very cunning, because he is good at contracting to projects but doesn't do specific work. He got the chance to build the three houses thanks to his relative in Li Village, and the contracts were signed based exactly on this affinal relationship among two parties. An's replay is as follows:

I am An Xiwu, male, 52-year-old, ethic Han, living in Anwang Village, Xinzhaidian, Zhao County.

This case has been issued for some years. This April, I was informed to join this lawsuit, for the reason that my construction crew should pay Li Erdan, Li Sanhuai the tree money. Actually in 1988, I contracted with Cui Haichun, Sun Zuocheng to build up houses for Daxing, Yuntian and Ruizhi. In the construction process, we needed wood, and Li Daxing said he had 48 trees, and could sell them at the price of 40 yuan per tree. So I should give him 1,920 yuan in total as tree fees. He said this money would be deducted from our

> building fees. Afterwards, because of inner conflicts, my partner Cui Haichun gave up half-way, and the construction was forced to stop. At that time, we settled accounts at 60% of the former price, with Ruizhi, Yuntian, Daxing, Duan Zhongxu on the spot. Daxing should have paid me 5,000 yuan as building fees, including 2,000 yuan as tree fees. So he should have paid me 3,000 yuan, but he said he didn't have that much money. Finally he just gave us 1,000 yuan. Until now he hadn't paid me off; he deceived us. From the above fact, it's clear that my relation with Li Daxing was only trade partners, and I had no relation with the plaintiffs, let alone the relationship between the two plaintiffs and Li Daxing.
>
> We knew this dispute had been mediated in Li Village for many times. At first, Li Daxing admitted that he couldn't pay off, but now he tried to free himself of his responsibility and shift the blame onto the construction crew. If I and Li Daxing had business relationship, why the plaintiffs didn't sue us? It directly showed our innocence.
>
> Aspens are now kept in Li Daxing's house, so our business relationship is not true. What's more, he still owed us house building fees, so it's irrational to let me be involved in this case.
>
> According to the above truth, I am not a party of this case. As I am added as a new party by court, I would like to ask for my appeal right and require the defendant to pay me immediately 4,000 yuan as construction fees and interests, and I wish the court would punish him for his fraud.
>
> Besides, I should not be the only new party added. Since the construction crew is charged by Sun Zuocheng, Cui Haichun and me, the other two should be added as plaintiff as well.
>
> Hope the court would process this case in accordance with the law.

Clearly, this case involves three "giving-paying back" relationships: (1) between plaintiffs and defendant, (2) between defendant and the construction crew, and (3) between plaintiffs and the other two house owners.

Logically speaking, to keep these reciprocal relationships well, mutual rights and duties must be shouldered on time. While in this case, as the reciprocal principle was disobeyed by one party, the relationship among four parties came into a mess, which needed a mediator to intervene. If the mediation failed, the punishment system must work to resolve it.

At the very beginning, the Village Meditation Committee had mediated this dispute, as nobody admitted having disrupted the reciprocal order, it failed. Therefore the plaintiffs placed their hope on the state law. When one party appealed, judge inquired the related four parties and tried to find who had destroyed the balance. Here is the resolving process, which is vividly shown in their dialogues with the judge as well as the evidence that offered by each side.

The indictment was handed to the court on April 17th, 1990, and a letter which stated the failure of mediation by the Village Mediation Committee was submitted to the court on the following day. Two days later, judge called the plaintiffs and the defendant for investigation.

Judge: Did you contract with Li Erdan, Li Sanhuai to develop the riverbank?
Defendant: Yes.
Judge: Did you discuss with your two partners when you sell trees to the construction crew? How many trees did you sell? How much did you earn? Where is the money?

Defendant: We all agreed to sell 48 trees, which amount to 1,920 yuan. The construction crew didn't give us money.
Judge: Which crew did you hire?
Defendant: Xinzhaidian crew.
Judge: When did you sell trees to the crew?
Defendant: In April, 1988.
Judge: Did the crew deduct tree fees from the construction fees when they build house for you?
Defendant: No, they gave up building the houses and didn't square up with me.
Judge: Did you tell Li Erdan and Li Sanhuai that you would pay them tree fees after completing the building of your house?
Defendant: No

This dialogue shows that the plaintiffs and the defendant have sold trees which cost 1,920 yuan to the construction crew. So in moral sense, the crew should pay them money. But this is mixed with another question. The two plaintiffs stressed that the crew had returned money to the defendant, but the defendant refused to divide money with them, and the defendant denied all of the claims, so the judge inquired Li Erdan.

Judge: Do you have proof that Li Daxing has said to give you money after the construction?
Plaintiff: Li Daxing said so in front of Sanhuai and my son.

On May 18th, the judge inquired Li Daxing for the second time.

Judge: You three hired An Xiwu's construction crew to build houses, did you settle accounts with him?
Defendant: He didn't settle with me. I don't know whether he has settled with Li Erdan and Li Sanhuai.
Judgment: How many trees did An buy from you?
Defendant: 48 trees, amounting to 1920 yuan.
Judgment: Did An build your houses completely?
Defendant: No

In the second day, the judge asked two plaintiffs to tell the whole matter all over again, who persisted that the defendant had said to pay them after construction. On July 3rd, the judge inquired An Xiwu for further details.

Judge: Did you settle accounts with Li Daxing?
An: Yes, in the eastern room of Li Xiaozhui's home, with Li Yuntian, Li Xiaozhui, Li Daxing and Duan Zhongxu on the spot.
Judge: Did you deduct tree fees from the total?
An: Yes, I deducted 2,000 yuan.
Judge: Why you didn't withdraw the tree-trade IOU from Li Daxing?
An: We said to withdraw it together after completing the construction

Here the judge found something odd, because it's irrational to pay without getting the IOU back. Then the judge asked the Mediation Committee Chief Li Fangzi. The chief said he had discussed it with Li Daxing's team leader Feng Zhiyu, and asked Li Daxing to give the plaintiffs 500 yuan to resolve the dispute, but Li refused and said the crew had not paid him tree fees.

On July 16th, the judge asked the defendant about the IOU, but the defendant said he was not clear about it. And he once asked plaintiffs to get the IOU, but they did not come. Later, the judge thought An Xiwu should be added as defendant, but the two plaintiffs disagreed. We can know the reason from the following dialogue:

Judge: Do you agree if the court adds An as a defendant?
Plaintiff: Both of us disagree with that, because our trees are sold by Li Daxing who said to pay us money. Proof offered by the defendant said we three agreed to sell trees, with me on spot. But actually I was in hospital at that time, and I have proof.
Judge: Do you have evidence to show that the defendant agreed to pay you two?
Plaintiff: No other people were on the spot when we discussed about selling trees. But he once said we two could ask him for tree fees. At the beginning, the defendant said that he did not have money and agreed to pay us on lunar December 25th, 1989. So we met each other that day. However, he told us that he hadn't deducted tree fees and shouldn't give us money. So we quarreled and went to Li Fangzi's home to decide which side was right. Li Daxing admitted he should pay us tree fees, but said the price was too high. Li Fangzi said each tree was only worth 25 yuan, and Li Daxing could pay us at that price, but it was refused by Li Daxing. Li Fangzi can prove this

From the above, we know the Mediation Committee failed to handle the dispute, for it aimed at making both sides to back off a little and tried to rebalance their "giving-paying back" relationships in a practicable way. As the leader of Committee, Li Fangzi proposed to lower the unit tree price from 40 to 25 yuan, so the plaintiffs could get money, and the defendant would pay less. However, the defendant refused to do so, and he persisted that the crew hadn't paid him. By that time, whether the crew had paid the defendant became the key point. So the judge inquired An Xiwu in April 1992 twice and following is the first dialogue:

Judge: Did you build the house for Li Daxing in Li Village?
An: Yes, for Li Daxing, Li Yunshan and Li Ruizhi.
Judge: Did you buy trees from Li Daxing? How much?
An: Yes, when we started building the house, we bought trees from him. But I cannot remember the total amount, because I was not in charge of it.
Judge: Is this IOU right? (Cui Haichun's proof)
An: Yes, 48 trees, 1,920 yuan.
Judge: How did this IOU read?
An: Li Daxing would deduct tree fees from building fees.
Judge: Did he deduct the fees at last?

An: Yes, all trees were sent to Li Daxing's home, and used for his domestic house.
Judge: How did he deduct?
An: In July 1988, in the eastern room of Li Ruizhi's home, since the house building wasn't completed, the building fees were calculated as 60% of the preestablished amount, namely 5,000 yuan as building fees, which he should have paid me. Deducted 2,000 yuan for tree fees, he owed me 3,000 yuan. At that time, I issued an IOU of 5,000 yuan to him, but he finally gave me 1,000 yuan on that day, with 2,000 yuan unpaid.
Judge: How did you settle?
An: At 60% of the total building fees, he should pay me 19,500 for the whole building.
Judge: How much did you withdraw from Li?
An: I couldn't remember.
Judge: Did you agree with these IOUs?
An: Yes.
Judge: According to these IOUs, how much should you withdraw from Li?
An: It amounted to 19,805.88 yuan. As I issued him a 5,000 yuan debt, except 2,000 yuan tree fees and 1,000 yuan cash, he owed me 2,000 yuan. We withdrewed 14,805 yuan from Li Daxing and I issued 5,000 yuan IOU.
Judge: As 2,000 yuan tree fees must be deducted, why did you write a 5,000 yuan receipt?
An: Both of us agreed to demand payment by IOUs when we wrote them. Li Daxing couldn't pay the building fees, and leaked the matter of tree sale to Li Ruizhi. I said to Li Daxing that he deducted 2,000 yuan from the building fees for tree sale, as he had already paid 1,000 yuan, he still owed me 2,000 yuan. Therefore I dunned him for several times. At the very beginning of the case, he and his wife found me once, and told me they could pay me all the building fees, on condition that I should pay all of the tree fees to him, which was denied by me. Judge, I suddenly remember this couple was accompanied by a man that day, who was introduced by Li's wife as their relative, an official in town court. The man didn't say a word from cover to cover, he was short and thin, around 30 years old.
Judge: Why didn't you withdraw the IOU after settling the accounts?
An: None of the three house owners has withdrawn the IOUs.
Judge: How can you prove Li Daxing still owes you money?
An: Li Ruizhi, Li Yuntian, Cui Haichun and my accountant Su Guoyu are witnesses, they can prove that

The second dialogue was between the judge and An Xiwu.

Judge: Did you contract to build houses for Li Daxing and two other households in 1988?
An: Yes.
Judge: In whose name did you use to write on the contract?

An: The Xinzhaidian Village Construction Crew of Zhao County, Hebei Province.
Judge: Have you finished the work set in your contract with the three households? Why?
An: No. Because members of my crew were temporarily hired, and many went away after half a year, so the construction was left unfinished.
Judge: How did you settle accounts with the three households?
An: Based on the general agreement, the accounts were settled by 60%.
Judge: So according to the proportion, how much should Li Daxing give you?
An: I'm sorry that I cannot remember the exact amount, but Li Daxing still owes me 2,000 yuan.
Judge: Do you have evidence to prove that he owes you money?
An: Li Daxing agreed to close accounts by 60%, and said to give me the payment that day. He should give me 5,000 yuan as construction fees, excluding 2,000 yuan of tree fees, so he should pay me 3,000 yuan in total. However, he just gave me 1,000 yuan. Then I asked Duan Zhongxu to wait the debt in Li Village for two days, but Li didn't pay. Then I asked Li Ruizhi for help.
Judge: Who is Duan Zhongxu?
An: Duan was the manager of construction crew, who took over Cui Haichun's job. Cui left a month before the closure of accounts, so Duan replaced Cui's role. When we settled accounts, Manager Duan and the Accountant Su Guoyu were on the spot.
Judge: Other than this, do you have more evidence?
An: It was said to give money after the settlement, so I didn't ask him to issue IOU. Li Ruizhi said Li Daxing would pay back the money, but Li Daxing didn't keep his promise.
Judge: Did you write the note which read you had got 5,000 yuan from Li Daxing?
An: Yes.
Judge Why do you write such a note while you didn't get all the money back?
An: After settling the accounts, I wrote the receipt first, and gave them respectively to the three householders, and then they would have brought money to me. When I was writing the receipts, the householders were present.
Judge: Why did you write receipt before you get the payment?
An: We were used to this model. Wasn't it an official routine?
Judge: Did you write IOU when you borrowed trees from Li Daxing?
An: Yes.
Judge: Did you get the IOU back after settling accounts? Why?
An: No, because all of the IOU signed by the three householders weren't annulled.
Judge: What's the cost for per square meter of the domestic building?
An: 130 yuan per square meter.

Judge: How many square meters did Li Daxing own?
An: Each of the three households was around 200 square meters. Sorry that I can't remember exactly.
Judge: Didn't your construction crew have an account book?
An: I didn't know whether they have one. If there was an account book, it might be kept by Su Guoyu.

An Xiwu repeatedly stressed that he had verified proof and certain witnesses; and the operation of his construction crew was reasonable. In his view, writing IOUs first and paying money back later was correct, because it conformed to the official routine of the government. However, after inquiring other people, the judge found no evidence could be proved that the crew had paid the defendant tree fees. After several trials, the court made the following verdict:

> According to our investigation, Li Erdan, Li Sanhuan and Li Daxing sold their 48 aspens to An Xiwu's construction crew on May 6th, 1988. As the price of one aspen was 40 yuan, the tree fees amounted to 1,920 yuan. The plaintiffs said Li Daxing would give tree fees to them when they were selling trees, but Li Daxing denied this arrangement and we found there was no evidence. As the IOU of tree fees written by An Xiwu was still kept in Li Daxing's hands, there was no proof to show tree fees had been deducted from the construction fees as An Xiwu asserted. Besides, plaintiffs said Li Daxing had dug 4 trees, but Li Daxing denied it.
>
> This court believed that Li Erdan, Li Sanhuan and Li Daxing had sold their contracted aspens to An Xiwu's construction crew. This matter is clear, and the evidence is sufficient. So An Xiwu should pay Li Erdan, Li Sanhuan and Li Daxing tree fees as soon as possible. Besides, no proof was given to show Li Daxing should pay plaintiffs tree fees, and no evidence to prove tree fees had been deducted from the construction fees. Moreover, the building dispute between An Xiwu and Li Daxing should not be mixed with this case; this court refuses to discuss it here now. The added pleading by the defendant for the 4 trees had nothing to do with this case. This court shall not deal with it in this case. As mediation failed, this court made the following verdict:
>
> First, within 15 days after the judgment comes into force, An Xiwu should pay Li Erdan, Li Sanhuan and Li Daxing 640 yuan respectively. Second, other litigation are rejected. And An Xiwu should pay 60 yuan as legal fee. If not agreeing with the judgment, the losing party can submit the appeal petition and three copies of it to this court within 15 days from receiving the verdict, and the case will be heard in the local Intermediate People's Court.

After clarifying the three "giving-paying back" relationships in this dispute, the court asked the defendant to "pay back" first, so as to restore the reciprocity among other parties. Because in many inquiries and verification, evidence that the defendant's crew owed the plaintiffs money was almost clear, thus the court made judgment to solve this problem first. Depending on the convergent interest between the plaintiffs and the defendant in tree fees, the court saw them as one party, which shared "giving-paying back" relationship with the construction crew.

But this method was not the best way to rationalize the reciprocal relationship. They confronted at court, precisely because it was impossible to settle privately. In the locals' eyes, if both sides can solve this dispute, they would never go to the "street". Here the "street" means to bring the dispute into the public, and to solve it through the Village Mediation Committee. It is worth noting that the

principle of mediation is give-and-take. If the mediation works, both sides would sit down together to have a dinner, usually at the house of those believed to gain more advantage. Through dinner, the benefiters would treat the counterpart wine and meat, and return his benefit to the other side. As a consequence, their beneficial relationship could be remedied and reestablished.

On the contrary, the "giving-paying back" relationship is restored involuntarily by the court's verdict, which can turn the friendly relationship into a hostile one. Moreover, hostility can be passed to the next generation, and turns into a feud. In Li Daxing's case, the above court judgment was not the end of the case. After An Xiwu lost the case, he appealed to the district court and asked the other two house-building households to prove his innocence. They all said that they didn't use Li Daxing's aspens, for Li used all the trees for his own house and An had deducted tree fees from the construction fees. Therefore, An did not owe Li money. According to Li Daxing's wife, when Li Daxing and she were cited to the district court, the judge placed a sheet of paper in front of Li. The judge told him: "You said An Xiwu owed you 2,000 yuan, but he denied it. Besides, the other two house-owners all mentioned that you had used all trees and had deducted 2,000 yuan from the construction fees. Do you dare to confront them by fingerprinting?" Because of illiteracy, Li Daxing felt he himself had reason, and made fingerprint on the paper. Few days later, Li Daxing received the verdict, which read that An Xiwu and the other two households' appeal was verified and Li Daxing agreed with this statement with his fingerprint; namely, Li Daxing should take out 1,280 yuan as tree fees and pay Li Erduan and Li Sanhuan. Li Daxing's wife told me that An Xiwu had sent gifts to the court, because when Li Daxing received the written order of the second verdict, the judge told them: "This is the final decision and you had better not appeal to the superior court". Afterwards, Li Daxing gave up appealing and paid money according to the court decision. But Li Daxing and the other two house-building owners, together with the other two tree-contracting partners really became "enemies". Even though they were relatives, they had never talked or interacted with each other since then. No contact or communication among them works as a revenge and punishment mechanism, which is very common in the rural society.

For villagers, "paying back the money that you borrowed" is right and proper. But in reality, it is often offended and ruined by individuals' impermissible behaviors. From the perspective of psychological dynamics, those impermissible acts result from people's desire for advantages. For instance, one may get extra profits, postpone the repaying time, or even occupy other's property as his own by ignoring the norm. In contrast, people who suffer losses would make their efforts to fight for their "reason". Here the word "reason" means to require other party to fulfill his pay-back obligation, so as to rebuild the reciprocal relationship.[2]

[2]From the archive of Ba County of Sichuan in Qing Dynasty, in law suits of land selling and debt presented to the court, complainants' logic read between the lines was hoping the county officer to be a mediator to recover the "giving-paying back" reciprocal relationship. Take a farmland selling and buying case as an example, "in the 13th year of Qianlong period, Yi bought the farmland of

We may conclude from the above argument that the reciprocal relationship is the basic principle of village community order, which can be shown through individuals' gift-exchange in everyday life. Generally speaking, individual's offense on reciprocity would damage the "giving -paying back" principle. At this time, the inner mediation held by the Village Committee is the most important way to solve it. If it fails, the engaged sides will resort to the law. As mentioned above, the law also tried to restore the reciprocal relationship between the two sides under the supervision of the state authority, in order to maintain the local order. However, compared with rural customs, the law does not adopt the mutual concession rule, but depends on evidence and inspection to determine who are "giver" and "payer". Therefore, from the repeated dialogues and the detailed survey between the judge and the parties, we understand that the judge's initial purpose is to verify the legal fact. But in rural acquaintance society, the legal fact is hard to find. Even if it is found, its validity is in question. The conflicts between law and custom on "what is fact" result in the misjudgment in solving civil disputes.

It is not to say that the law is useless in rural society. In my opinion, the law interacts and inter-plays with customs. Through investigating the resolution of civil disputes in Li Village, we found that villagers were learning to narrate the fact so that it can be verified by others. And they had learnt to save and organize evidence for further legal inspection. At the same time, local judges were using the mutual concession norm in civil customs for their legal work. With the rule of "settling civil disputes mainly through mediation", the norms in local villages have a place in solving disputes. This kind of compromise between local customs and the national law can prevent overemphasizing the legal authority or weakening the reciprocal relationship in rural acquaintance society, thus to maintain stability in rural society.

5.2 Abuse of Power

In the institutional sense, regularization and systematization are not important in rural economic activities. Villagers make trade on the basis of credit, therefore the rule of "no pay, no goods" is not popular among people, but they may use IOU with acquaintance as a go-between. In Fei Xiaotong's words, this intercourse model exclusively belongs to an acquaintance society, rather than a stranger society (1992).

Fairness is the pillar of credit, which demands nobody to take advantage. From Liang Zhiping's studies in customary law of Qing Dynasty, villagers' awareness of fairness had encouraged the popularity of customary laws (1996a, b: 55–56). And

Wang. Several years later, Yi was in debt, he sold his property to Tian Taihua in the 38th year of Qianlong period at the price of 960,000 copper coins. At that time, Yi received 790,000 copper coins, with the left 170,000 copper coins unpaid. Besides Yi's original contract, Yi asked Zhang Mingyang to write another one. Tian (the borrower) didn't pay back the rest money. Since Tian was rich and powerful, Yi had no way but to ask the officer for help." (Sichuan Provincial Archives 1991: 17).

fairness could make sense only on the condition that the customary principle wouldn't be breached or abused.

Fei Xiaotong once stated a case in Lu Village of Yunnan Province, in which a villager mortgaged his land to gentry for money, but the gentry finally appropriated his land. In this case, since the court dreaded the gentry's power, they covered him up, and the villager lost his land. If it was resolved by rituals, the villager could get his land back, for one could borrow money with land guaranty, and redeem the land by refunding the money he borrowed. However, since the law that represented the state power intervened, rituals lost the constraining force on people's behaviors, and were replaced by the law (1946). The villager who suffered loss in Lu Village shouted "There is no rule!" to express his discontent. However, it's not about whether there's a rule or not, but the fact that rituals are affronted by the state power.

As Pound pointed out, after the legal nation which controls the society by laws has been set up, laws could turn to damage the local order and trigger more unfairness, if it is not monitored by a precise mechanism (1942).

Once the gift exchange is infiltrated with the state power, people can take advantage of the power to gain more interests. With the "giving-paying back" relationship between bribee and briber, the power is abused, which ruins the previous reciprocal relationship and produce unbalanced exchanges.

Based on studies in Northeast of China, Yan Yunxiang found an unbalanced gift-exchange relationship between villagers and governors. In that exchange, villagers who send gifts to governors won't get back gifts of equal value, but they will ask governors to bring them benefits by using their power. Needless to say, such gift-exchange relationship is mixed with individual's interest and the national power, which means bartering a packet of cigarettes for a good homestead, or a dinner for an exemption of penalty (1996: 148–152).[3] Dajun, a Li Villager, told me his story about bribing the director of a police station who was his high school classmate.

One day, Dajun's brother-in-law was detained for transporting fireworks. His brother-in-law came to ask him for help since the in-law knew the relationship between Dajun and the police director. Dajun wanted to invite his classmate for lunch to plead for mercy, but the director refused. After that, Dajun gave him 200 yuan for letting him buy cigarettes, so the director found difficult to refuse him. Somehow, they had dinner together and Dajun gave a packet of cigarettes to his previous classmate, spending nearly 300 yuan altogether. The director finally

[3]It is common in rural areas to exchange gifts like money or agricultural products for country's authority resources. A recent study on popular Chinese ballads conducted by Li Qingshan showed another type of exchange: the "exchanging things for things" reciprocal relationship, which means "both sides own some rights which control resources that the other side needed". To realize one's goal, each side should meet the other side's request. Namely, two parties are both the requesting side and the requested side. If they want to realize their own goal, they have to help the other side reach his. This is the commonly said "exchanging things for other things that the reciprocal relationship is convenient for both" (Li 1996: 313). This reciprocal relationship is common in urban area instead of rural area, because farmers do not have any state power. It is more often for rural residents to exchange their economic resources for taking advantage of the state power.

promised to help his brother-in-law. The next day, his brother-in-law was called to get his fireworks back. Since the case had been already reported to their superior, the in-law could only get part of his fireworks back, but he was exempt from the penalty. Dajun's brother-in-law was extremely satisfied with this result, because they only spent 400 yuan to settle this matter instead of 2,000 yuan according to the penalty term.

Clearly, the policemen's right for public security was used by the police director as an exchangeable resource under the reciprocity principle. Due to the classmate relationship, one gave money or gifts and the other returned an invisible benefit. State rules were abused for personal interests. However, such so called equal exchange brings inequality to the community, as only those who have relationship with cadres at the basic level could play such exchange.

Another case is about the divorce of Li Ruiyun's daughter, for that I still have a fresh memory. In a very cold morning in Li Village, I visited a friend to kill time before I went for a planned interview of a family. After a while, a man called Li Ruiyun came in, who wanted to talk about his daughter's matter with me. Then I followed him to his house, a two-story building without much furniture. To welcome me, he brought a coal stove into the room where I sat and told me about his daughter's case.

The girl who had been divorced was Xiaoxue, who married Xiaodong in the neighboring village at the age of 19. Since Xiaoxue's mother knew Xiaodong's aunt, his aunt served as the matchmaker and proposed the marriage. As Xiaoxue and Xiaodong were not old enough to get married according to the National Marriage Law, they did not register for their marriage officially. But the bride's family followed local customs and provided dowry of clothes, TV and other things. However, six months after their marriage, the groom's family wanted to borrow 30,000 yuan from Xiaoxue's family for building house. Xiaoxue's parents gave Xiaodong 6,000 yuan at Spring Festival without writing an IOU, for it was custom borrowing money without IOU in rural society. Two villagers were on the spot when Xiaodong got the money.

Two months later, Xiaodong, the husband, asked his wife's family 20,000 yuan to buy a motorcycle, and threatened to get divorce if his wife's family refused to give the money. Xiaodong's exorbitant demand made Xiaoxue heartbroken. She returned to her natal family and told these things to her parents. Xiaoxue's mother didn't believe it, so Xiaoxue finally asked his husband to write down the matter as evidence. Afterwards, Xiaodong sued to cancel the illegal cohabitation with Xiaoxue and at last Xiaoxue failed to get her dowry and 6,000 yuan back. Later, Xiaoxue's family was aware that the judge of this case was from the village of Xiaodong and his relative worked as secretary in their village. Besides, Xiaoxue's family heard that Xiaodong once took pears to the town by tractors. Knowing these details, Xiaoxue's family firmly believed that Xiaodong had bribed the court. But without any proof, they were forced to resort to other ways. Xiaoxue's father told me that they felt so unfair that they would appeal to the intermediate court for justice.

Li told me he had asked a cousin of her wife to help him win the case, because the cosin's husband was a middle-level cadre who worked in the public security bureau in the town. Actually, Li and this man hadn't been in contact in the past

because of the troubles left by the family division. Even so, in order to win the lawsuit, Li gave him two cartons of cigarettes and several bottles of wine and something else to restore the relationship. After that, he brought more than ten boxes of pears to the cousin and asked for helping him to get things back from Xiaodong without considering the cost monetarily. When I left the village, the second verdict of this case hadn't been reached yet, but Li told me confidently that he would win the case, because he had sent the chief judge a box of wine valued over 800 yuan the day before the hearing, thus the case would be sentenced in favor of him.

The third case was about Li Shuhai who offered me a detailed record of cost for a dispute not ended yet. Li Shuhai was 52 years old and there were 10 members in this three-generation family. His house was big and modernized which was very different from the shabby one of his older brother and people couldn't believe that they were blood brothers. According to an old man in the village, Li's wealth mostly came from his marriage. His wife was the only child in her family and she inherited all the property from her parents which made them wealthier than other villagers.

At the time I interviewed Li Shuhai, he had been filed a suit on behalf of 14 households for more than two years and the case was not resolved. According to him, reason for their failure resulted from the defendant's powerful economic strength and his well-connected relationships. The defendant of this case was named Zheng Huanxiang, who occupied the public farmland passage shared by other 13 households. Li and the other households could not go to their farmland through the passage, because Zheng used it to plant wheat and build cold storage room.

There was a proof offered by the village team and the village brigade that the 14 households had the right to use this shared passage. They first sought the Village Mediation Committee to resolve this dispute, but no agreement was reached. Then they initiated a lawsuit, but failed again. Other than they lost the battle in court, they also lost a large sum of money. Table 5.2 lists the plaintiffs' cost for the lawsuit, indicating the hardship to win the case.[4] As the saying goes, "the court gate opens widely but people who have reason but with no money are not welcomed" (Chu 1998: 298). This is a vivid expression for the case I mentioned here. For villagers, a lawsuit would cost almost all the money one has, no matter how rich he is.

This unresolved civil dispute over the shared passage had already cost the plaintiffs nearly 3,000 yuan since the appeal. All that money was pooled together by the plaintiffs (14 households) in six times. In the local words, this was called *huopeng*, which means sharing the expenses equally. They raised money together and elected two or three butter-tonsiled people to litigate on behalf of their interests. Within these two years, one dinner over 100 yuan was held for at least five times,

[4]Since this dispute involved 14 families' interests, these families sued the defendant jointly. Thus, every family shared the cost evenly. The cost was recorded by Li Shuhai and other two people and each cost was recorded in detail. Information of the table is from this account book.

Table 5.2 Expenses on one legal case

Date	Spending items	Amount of money (yuan)
Apr. 17th 1995	Fees for the township legal service office; a meal of three representative plaintiffs in Fanzhuang Village	119
Apr. 17th	Fees for the county law firm	150
Apr. 19th	Legal fees for the county court	110
Apr. 19th	Legal fees for the county court	40
Mar. 7th 1996	Two packs of cigarettes	7
Mar. 9th	Went to the Gaojiazhuang village officer; a meal of four representative plaintiffs	55
Mar. 20th	A dinner to welcome lawyers Shengli and Lianmin to Li Village for the investigation	55
Mar. 24th and 25th	Two packs of cigarettes; a meal	21.80
Mar. 28th	Cigarettes and tea for lawyers in the township law firm, who came to Li Village for the investigation	14.5
Mar. 30th	A pack of cigarettes for the court to investigate facts	4
Apr. 5th	Cash for the notary office in the county	200
Apr. 5th	Cash for Lao Wang, who held the first trial	200
Apr. 5th	Cash for Shanghai, the lawyer of intermediate court	200
Apr. 9th	Car fare for three plaintiffs to the county court; a pack of cigarettes	15
Apr. 30th	Four packs of cigarettes for the municipal court	231
Apr. 30th	Car fare for six plaintiffs to the municipal court; lunch and dinner of six plaintiffs	150
May. 5th	Car fare and meal in the town	86
May. 6th	Car fare and meal of five plaintiffs in town; copy fees	46
May. 8th	Copy fees; two packs of cigarettes	15
May. 11th	Car fare for the township court; two packs of cigarettes	88
May. 18th	Car fare for the township court; one pack of Shilin cigarettes	44
May. 20th	Costs for meeting with the chief judge of township court, including car fare, copy fees, telephone fees, and a meal of two representative plaintiffs	165
Aug. 25th	A pack of cigarettes	44
Aug. 30th	Copy fees and costs for cigarettes, spent by Qingqian, Chouhai and Shuhai	8.5
Oct. 24th	A pack of cigarettes for the township law firm, and a meal cost	17
Oct. 25th	Topographic survey by the court and the law firm; a dinner in Yingrui restaurant	157
Nov. 2nd	Car fare for Dawa and Shuhai to the township court; a meal cost	4.8
Nov. 15–18th	A pack of cigarettes	3

(continued)

Table 5.2 (continued)

Date	Spending items	Amount of money (yuan)
Feb. 26th 1997	Car fare for Shuhai and Qingmin to the Zhao County; a meal cost	235
Mar. 3rd	Attorney fees	200
Mar. 5th	Various fees for the county court session	127
Apr. 13th	Car fare for Haisheng and other plaintiffs to the county; costs for cigarettes	59
Apr. 21st	Costs of seven people for attending the county court session	109
Total		2980.6

and the most expensive one reached 235 yuan. Moreover, the spending record showed that they spent 400 yuan on April 5th, 1996 which seemed not normal. Li Shuhai explained that this money was given to the judge and lawyer for the lawsuit uses, such as field investigation, gifts to related people or meals before and after the trials. It's necessary to do so, if not, the plaintiffs would feel uncertained and unrelieved. He recalled that once a time when he went to the municipal court for a session at 2:30 p.m., he waited for nothing but a call, which told him that the session was canceled, for the court officials went to a lunch with one party of another case and got drunk. Therefore, they wasted their traveling expenses, time and efforts, and returned without a result. If they had ingratiated with the officials, it would be very different.

The above cases show that when power turns into an interchangeable resource and integrates with folk reciprocal system, social justice relying on reciprocity may become invalid. Instead, an exchange system of "differential patterns" starts to make effect, which is based on people's closeness with the court officials, as well as their gifts to those in power.

In the following part, I will change the argument from the individual case to the collective one, namely those about the national tax, so as to analyze how the national tax system transfers the inborn reciprocity relationship in the rural society.

5.3 Tax and Revolt

Duara's studies have shown that grass-roots political power in North China is gradually built with the state power expanding downward (1988). At the same time, its building process directly links with the expansion of fiscal power, which aims at extracting taxes from villagers. Since 1949, the state had realized its tax goal through developing rural collective organizations. In that era of planned economy, individual was no longer a "taxpayer", who got economic interest by "earning workpoints". Due to the national stringent supervision, though villagers had

complaints about the economic policy, they had no channel to express their discontent. With the advent of reform and opening-up policy in 1980s, a new relation between the state and the folk was coming to surface (Pye 1996). However, the substantial growth in non-agricultural spending of state administration resulted in a heavier burden on villagers, and strained the relation between the state and the folk (Ash 1996), which could be seen from Li Villagers' resistance to pay national forest product tax.

I will illustrate the forming process of modern power pattern in Chap. 7. Here what I want to emphasize is that the downward expansion of state power had ignored the reciprocity relationship in rural society,[5] for authorities apportioned or levied taxes blindly regardless of villagers' actual income, which inevitably brought their relationship in danger. As Scott indicated in his researches about villager's resistance, various forms of resistance would emerge when the external force had lowered their living condition to be below the subsistence level (1976; 1990). In Li Village, apart from some secret strategies like "networking" (*laguanxi*) to oppose the state power, another way to resist the power was the so-called "refusal to pay". Especially when villagers had experienced poor harvest or government agents asked an excessive tax-paying, such resistance would emerge.

Similar to other rural areas in China, taxes in Li Village can be divided into two kinds, the agricultural tax and the forest product tax. The former refers to the tax paid for growing grains, while the latter is just recently launched in fruit-trees planting areas. Li Village is a pear growing area and people live upon pears. Therefore most tax that villagers pay is for forest product, so the forest product tax constitutes the most significant part of local revenue. By comparison between the agricultural tax and the forest product tax in Fanzhuang Village (see Table 5.3), it is clear that the collected forest product tax is almost 10 times more than that of the agricultural tax.

As the amount of agricultural tax is not much, it is unlikely to trigger conflict. But the forest product tax is not in proportion with villagers' actual earnings, which is influenced both by the continuing fall of pear price in the market and the unadapted tax system.

[5]Demographers always express the reciprocity in revenue in the term of "making both ends meet". He Bingdi's study on the population development from Ming Dynasty to 1950s showed a law that the efficiency of a government could be indirectly reflected from whether breaking the principle of "making both ends meet". The ruling class generally calculated expenses at the beginning of state-founding, hereby setting the nationwide tax amount and assuring nation surplus. Once the tax amount was set, it could not be changed (He 1989: 118). Reasons for the increase in tax resulted from the fact that the government had intensified state-building or hadn't implemented strong supervision on corruption. He Bingdi's comparison of tax system between the government of late Qing Dynasty and that of Republic China may be inspiring. He asserted that "if the tax burden of farmers was heavy in the late Qing Dynasty, their situation would be worse in the early Republic of China. Even if the financial system of late Qing Dynasty had decayed, it was still based on the traditional tax amount and the principle of 'making both ends meet'. In the republican period, warlords were unscrupulous and were totally shameless blackmailers. They added taxes and levied at will and often collected land taxes in advance. Until the end of 1920s and the beginning of 1930s, the financial reformation of the National Government had seldom improved farmers' life, although it did make some progress technically" (He 1989: 214).

Table 5.3 Agricultural tax collected from 1995 to 1997

Year	Agricultural tax (yuan)	Proportion increased compared with last year	Forest product tax (yuan)	Proportion increased compared with last year	Forest product tax /Agricultural tax
1995	622458.40	–	7318378.7		11.76
1996	992441.53	37%	8235772	11.1%	8.30
1997	991847.11	–	9089472	9.3%	9.16

The original source Statistics of Fanzhuang Village township government

One man that I interviewed is Li Shuanglin. At the very beginning of our talk, he began to complain about the high tax. He told me that there were six people (grandma, mother, wife, son, daughter and himself) in his family. Each of them should pay almost 400 yuan that year for the forest product tax, which amounted to about 2,400 yuan in total. That year, each of them only produced 80 boxes of pears. If one box of pears could sell for 10 yuan as net income, his family could get only 4,800 yuan in total. Half of which would be used for tax. Fees for insecticide and fertilizer should be deducted from the other half of the income, which made their annual incomes less than 100 yuan per person. Since all of their land was planted with pear trees and they did not grow grains themselves, they had to buy food for living on the market. He continually grumbled "it is truly unfair!" He said he would pay only if he really had to. As he didn't have enough money to pay the tax, he would borrow from others again. I had a following dialogue with him:

The author: It seems that refusing to pay tax is illegal, isn't it?
Li: I know it's illegal, but what can I do? Pear planting isn't good in these two years,Local dialect of Buzhan means a bad situation. while the tax that I must pay remains the same. Where can I get the money!
The author: How much tax do you think is appropriate for you?
Li: Half of the present amount of the tax. I don't want to dodge because I used state land and I should pay state tax.
The author: Why it is suitable for you to pay only half?
Li: If half of the tax that I should pay now can be saved, my family could have enough to eat and I don't need to borrow money.Selected from an interview with a Li villager on November 18th, 1997.

From the above conversation, it's clear that tax-paying is seen as an obligation by villagers. Their logic is that their land is state-owned, and their pear trees are from the collective, so they should pay tax in return. In this sense, paying tax is not only a compelling obligation, but also a practice of reciprocity. In this practice, villagers earn their money while the state gains due tax, which is fair. But if what villagers earn from the land is completely given to the state, villagers would feel a sense of unfairness. Once this feeling emerges, they would play their trump card, which is refusing to pay the tax. The reason behind this conflict is the dissatisfaction with the state's disregard for their real lives.

I once visited a 70-year-old man named Li Changxing, who was very healthy and had planted some pear trees at that time. His family included his wife and his daughter. His wife came from Dadongping Village in the southeast while his daughter married a man in Li Village. As his daughter did not transfer her ownership of land and trees to her husband's family, three persons' land and trees were under Li's name. Ordinarily, Li and his wife attended their own trees, while the daughter was responsible for hers. That year, Li's family reaped 60 cases of pear per person, most of which were cheap Yali pears. Nonetheless, according to the tax system, each individual should pay 400 yuan as forest product tax, thus the old couple needed 800 yuan in total. The high tax made him very angry. Lit a cigarette, he told me, "all of the pears won't worth 600 yuan if I sell them all. However, I need to pay over 800 yuan at once. It's impossible, isn't it? The tax-paying should be resonable. If it is a harvest year and pear price is high, I am willing to pay more tax. But this year, influenced by the spring drought, pear production is reduced and its price is low. Where can I get the money to pay tax? The reason for paying tax is not wrong. I also understand that the young people should support the old and individuals should bear burden for the nation …."[6]

Pears constitute the main source of Li Villagers' income, and pear trees serve as the backbone of Zhao County's economy. However, since 1994, the market price of pear had continued to drop, while tax on pears had been on the rise. For example, the whole forestry specialty tax of Fanzhuang Village was 7,318,378.47 yuan in 1995; it was raised to 8,235,772 yuan in 1996, 11.1% more than the previous year; 9,089,472 yuan in 1997, increased by 9.3% (see Table 5.3). On the contrary, villager's income had been decreasing. According to their memories, the average price of pear was about 1 yuan per jin (0.5 kg) in 1995, and the average income of each person could achieve almost 3,000 yuan; in 1996, the pear price had fallen to 50 cents per jin, with annual earnings dropping to no more than 1,000 yuan. This year, pears hadn't been sold out yet. It was estimated that each villager would earn about 500 yuan. There left almost nothing after paying the tax.

One question we need to raise is what kind of benefits villagers can get after paying the state tax for their living environment or agricultural production. There is still no accurate statistics to answer this question. But according to the fiscal spending of a county, real investment in agriculture did not constitute a large portion (see Table 5.4).

In the decade from 1976 to 1986, the county government had spent less and less on agriculture, from 1.592 million to 0.33 million. Conversely, the total spending had risen from 4.498 million to 14.12 million, which was increasing every year. Such difference made villagers complain a lot. They pay tax every year but they cannot get what they need in return, such as chemical fertilizers, pesticides, counsels for agricultural technologies. Moreover, they still have to pay money for road construction. This just confirms the following argument. When the state power expands to the grassroots level, the more villagers contribute to the state, the less

[6]Selected from an interview with a Li villager on Novermber 14th, 1997.

Table 5.4 Fiscal spending in Zhao County by various categories, 1976–1986

Year	Fiscal spending (in 1,000 yuan)					
	Total	Agricultural subsidies	Culture, education and health	Pension benefits	Administrative charge	Other spending
1976	4498	1592	1668	282	934	22
1977	4719	1553	1738	288	1001	37
1978	5267	1655	2192	336	1040	44
1979	7582	1275	2364	334	1210	454
1980	6160	1090	2881	400	1230	460
1981	6139	882	2840	410	1174	702
1982	7330	780	3450	440	1600	870
1983	8330	1330	3830	430	1930	740
1984	9781	306	4267	532	2216	995
1985	9740	170	4530	620	2570	360
1986	14120	330	5770	720	3200	4100

The original source Zhao County chorography compilation committee in Hebei Province (1993: 223)

they can get as feedback.[7] Coincidentally, some responsible economists have provided similar examples in rural China with even more striking facts. For example, as in the 8 years from 1989 to 1997, tax paid by villagers in Nandeng Village of Baoding County in Hebei Province had increased by 925%, in which the agricultural tax had increased by 295%, the tax collected by the town as a whole had increased by 1989%, the tax for village administration had increased by 552%, per capita tax had arose from 16.16 to 137.52 yuan, 750% more than that of 8 years before. Compared with the increase of 142% in villager's income, their burden was obvious. However, money paid as tax did not go to the central treasury, but was held by the country authority ("Uninsured" investigation team in the Chinese academy of social sciences economic research institute 1999: 430–432).

Involution was a term invented by Duara (1988: 73–77), through the above analysis, we can invent another term—the involution of state power in rural China. The increase in state tax would make the grass-root administration work inefficiently, because the government is unable to make the tax collection completely institutionalized. If the tax collection does not bring benefits to each layer of the administrative system, the officials responsible for taxation couldn't finish his job,

[7]In *Chinese Gentry, Urban-rural Relationship*, Fei Xiaotong clearly pointed out the urban-rural relationship that before 1949: Gentries who lived inside urban areas extracted land interests from farmers, but they didn't return necessary products that farmers needed. Their actions caused damage to rural villagers, thus leading to many social problems (1953: 91–107). This condition can be still reflected by the present urban-rural relationship. However, it is the administrative system that has extracted farmers' interests, instead of gentries who acted between the national authority and civil society. Such revenue system aims only at realizing economic goal, forgetting to return the basic interests to farmers. It may cause social problems.

thus the bottom-up tax collection cannot be completed. To avoid this failure, the higher authority would empower the lower to determine the exact amount of taxes. In the process of tax-collecting, a part of the levied taxes could be kept for rural governments as additional finance, and the rest would be turned over to the state. Inevitably, the involution of tax collection would lead to a vicious cycle. On one hand, the national tax would increase from central to local level by level and year after year; on the other hand, the welfare returned to farmers would be in decline, "in other words, the ability of the state to control local society was weaker than its ability to exact from it" (Duara 1988: 73).

The reciprocity in this case means that one side gives generously and the other side reciprocates compulsorily. One perfect example is the potlatch ceremony held by Quark tribes in the northwest coast of North America, which exemplifies the logic of reciprocity. In the potlatch, people can obtain prestige at the expense of wealth, or get wealth by good reputation.[8] This ceremony may have implications for us to understand the reciprocal relationship. The non-reversing extraction from villagers could result in the imbalance between the state and villagers, which shakes the foundation of social order. Non-reversing rule is not only harmful to the interpersonal relationship, but also to the relation between individual and country. Villagers are to "give", but they also want to receive wealth or honor as "feedback".

Here, we can make such an explanation: villagers' annual income consists of two parts. One is the earning which should be delivered to the state for using its land; the other is the state's feedback for awarding the villagers' hard work. Only in this way could the reproduction of agricultural economy be in normal operation, so as the state-villager mutually beneficial relationship. However, if the state doesn't consider the villager's actual income, and takes away most of their earnings, the reciprocal relationship would collapse, with the economic order being damaged. The reason is simple, that is, too much tax would force villagers to borrow money, so their investment in agriculture would be limited. Therefore, the economic state will be more difficult to gauge, which would ultimately be recovered by reducing the national tax, so as to reestablish the reciprocity relationship between the state and villagers.

[8]Potlatch of Kwakiutl people was first described by the American anthropologist Franz Boas, and then explained by Benedict, which was generally regarded by subsequent anthropologists as a kind of economic redistribution system. This ceremony distinctly existed among Indians in American northwest coast, especially in groups like Tlingit, Salish and Kwakiutl. According to Chinooks dialect, potlatch can be understood as "give-away". In that ceremony, local leaders gave away their properties in a seemingly wasteful way. Every family would hold this kind of potlatch. Before the potlatch, they needed to spare no efforts to collect food and valuable articles, such as fish, fur and so on, and gave these materials to local leaders. In potlatch, leaders usually took more articles than their competitors so as to give away their possessions. The more gifts they gave away, the higher status they obtained. Anthropologist Kottak explained this process like: "A village enjoying an especially good year had a surplus of subsistence items, which it could trade for more durable wealth items …. Wealth, in turn, by being distributed, could be converted into prestige …. The long-term adaptive value of intercommunity feasting becomes clear when we consider what happened when a formerly prosperous village had a run of bad luck." (Kottak 1944: 177).

If this relationship cannot be balanced, villagers would invent strategies to make a bargain with the state. Such strategies work as "the weapon of the weak" to show their resentment towards the state, which include stopping investing manpower and material for agricultural production, earning money from other ways, postponing tax payments in the fall or even revolting it openly.

5.4 Reciprocity and Justice

Early anthropologists have discovered that mutual familiarity is a must in the Maori's product-exchange in New Zealand. Familiarity was built through the reciprocal gift exchange, and serves as the basis of all economic activities (Firth 1929: 402–415). However, anthropologists studying the Ifugao have found a person's greatness lies in his popularity in the villages, rather than how much wealth he has. This is not to say the Ifugao have indifferent opinion of material wealth, they also amass money, but their wealth is used to improve their status. Wealthy people would construct a statue in front of their gate, and invite all villagers to join in a *uyauwe* party. In the party, his surplus wealth would be consumed by villagers, and his reputation in village would be consolidated in return. Through the reciprocity between the rich and the poor, the rich could keep a respectable role throughout his life (Barton 1919).

In Malinowski's vision, fishermen and inland villagers exchange their materials, the former offers fish to the latter, while the latter gives the former vegetables. This rule is mutually recognized and permanently kept, with the involved parties clearly knowing and earnestly performing their duties. It forces one to reciprocate after accepting the other's gift, vice versa. As they are friends, nobody can refuse, nor can they grudge or postpone giving back. What is the driving force behind these duty-bound responsibilities? It can be found in Malinowski's detailed fieldwork notes. As the seashore locals don't have enough vegetables, and the inland people need the supply of fish, their mutual interaction could guarantee both sides' food in abundance. Food supply is the basic motive to exchange. Moreover, when the material motivation develops into a cultural phenomenon, it is added with the obligation that demands both sides to exercise the reciprocal rule. And the principle of reciprocity is not just limited to actions like taking fish for vegetables. As Malinowski said, "As a rule, two communities rely upon each other in other forms of trading and other mutual services as well. Thus every chain of reciprocity is made the more binding by being part and parcel of a whole system of mutualities." (1926: 23).

Similar to what Malinowski found in Trobriand Islands, reciprocity also works in Chinese rural society. If not considering the influence of the state on civil society, we can find a binding duty formed by reciprocity is shouldered willingly by everyone. If it is followed, both sides can get benefit; once it is offended, the breaker will be punished by rituals. Therefore, we can say that the reciprocal principle is the foundation of social order, and offers the standard by which people distinguish justice from injustice. Besides, the pursuit for "justice as reciprocity"

(Barry 1995: 72) is also the premise of social action, for it is beneficial to both sides. In this way, disputes always result from the violation of reciprocal principle, and its settlement is to restore the damaged reciprocity.

From the above analysis, we can reach the following conclusions. First, the disputes between individuals tend to appear when the reciprocity is offended. To restore it, both law and rituals will come into display. People who suffer the loss have the right to obtain compensation through formal legal system. If law fails, the civil punishment mechanism would be mobilized to discipline the offenders according to the customs. Second, as to the state-villager disputes, villagers hope their life can really get improved through paying taxes for the national construction, so as to maintain a smooth beneficial relationship with the state. However, as some government officials would abuse their power, and leverage their position for personal gain, social injustice would come into surface, making villagers lose their approval and belief in state authorities. To recover the reciprocal relationship, villagers will take "power-for-money" deals in alliance. Besides, when the agricultural tax is extracted from people without being used for people, or extracted with no return, villagers would have a biased understanding of tax payment, and adopt various ways to refuse to pay. As a result, the reciprocity abided by both sides is challenged. When villagers know the gap between what they give and what they get, they would refuse to pay tax, in order to punish the government in another way.

Clearly, reciprocity not only exists in the economic exchange, but also in all aspects of life, especially in folk beliefs. In the next chapter, you will see that the essence of folk rituals is also reciprocity and fairness, which work under the surveillance of the gods.

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Chapter 6
Ritual and Order

In its most elementary developments law is intimately bound up with magic and religion; legal sanctions are closely related to ritual sanctions.

Radcliffe-Brown (1952: 219)

6.1 Reconstruction of the Village Temple

Villager Li Wenshan remembered that there were several temples in Li Village before the Equal Distribution of Land Reform in 1947, but they were destroyed by villagers later. The dismantled bricks and wood were distributed to each villager, however, these objects gained from the temples were burned later during the Cultural Revolution, because they were symbols of "feudalism", "capitalism" and "revisionism".

Li Wenshan was a teacher in the village elementary school, when I interviewed him, he was 70 years old and was retired. With his good memory, he drew a layout of village temples, and eight temples were listed, namely, Sanxiao Temple, Wudao Temple, Nanhai Temple, Lvzu Temple, Nanhai Temple, Zhangye Temple, Sanguan Temple and Fengjiawudao Temple (see Fig. 6.1). The present village temple was rebuilt in the 1980s to worship the *Zhangye*, so it was named as "Zhangye Temple", opposite to which was a small temple to worship the Goddess of South Sea (*Nanhai Guanyin*). The village temple was rebuilt on the clearing in the south, with special permission from the Village Committee.

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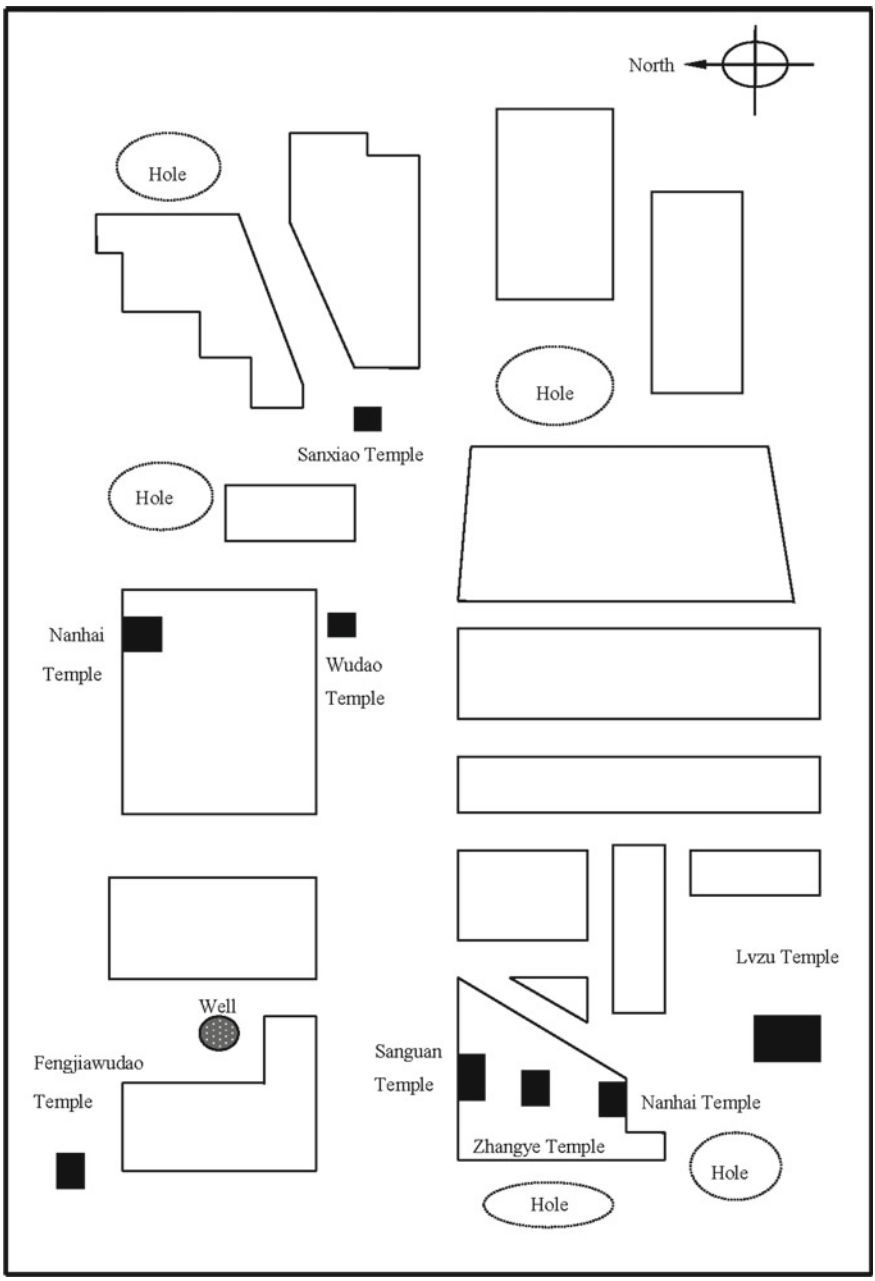

Fig. 6.1 Layouts of village temples before Land Reform

Many legends were told the origin of *Zhangye* and how he landed in Li Village, some of which were written in the *Li Village Records*.[1] (Li 1993) While the most famous one was told by Li Qinggang,[2] it goes as follows:

> Once upon a time, there were legends of "Wuguo" (five towns), "Sibaishe" (four villages), "Jiutuan" (nine villages), "Shibacun" (eighteen villages), and "Yibaidanba Zhuang" (one huandred and eight villages) in Zhao County. "Wuguo" means five towns, including Yangjiaguo, Wangjiaguo, Zhangjiaguo, Zhengjiaguo and Xujiaguo. Zhangjiaguo located in the west of Wangjiaguo.
>
> In Zhangjiaguo, there was a man called "Lao Zhang", who lived by watering land. One day, he told one of his sisters-in-law that he was a dragon, which was laughed by her. To convince her, he asked her to verify his words by entering his room before sunrise. One morning, driven by curiosity, the sister-in-law got up earlier and came to his room. Not daring to enter directly, she pushed the door slowly, and looked inside through the seam. There was nobody in the room, only a dragon lying on the beam, and that was really Lao Zhang. Lao Zhang noticed that somebody was looking at him and put his dragon tail out through the door, which frightened the woman, so she shut the door with a rush, and the door squeezed off a bit of the dragon tail. Since then, there came out a legend about "Snipped-tail Lao Zhang".[3]
>
> Lao Zhang was a kind and candid person. When people knew that he was a dragon, someone would ask him for a favor and their lands would be watered. There once lived a

[1] *Story of Zhangye* was collected by Liu Qiyin, edited by Li Shengtian, Li Yonghui and Liu Qiyin (Liu 1993: 127–129).

[2] Li Qinggang was 83 years old the year I interviewed him, who passed away in 2001. According to his wife, he seldom worked in fields when he was young and had great interests in religious activities. In his spare time, he would diagnose diseases for children without making prescription or offering medicine. His medical treatment was very easy to understand, and his operation was very important. Locals thought there were two kinds of diseases, one is "real disease", and another is "virtual disease". "Real diseases" were those you can find reason for its occurrence, like toothache, stomachache and so on. On the contrary, "virtual diseases" were those controlled by gods. Medicine and acupuncture could cure "real diseases" and Li liked the acupoint method. He would treat people at his home. In the first and fifteenth day every month, the time to offer incenses, he would go to the temple and cure diseases there. As to the "virtual diseases", the only way he thought to do was something like witchcraft. For example, if a child got fever for no reason, he would see it as "encountering" gods or ghosts. Only witchcraft could drive the diseases away. Therefore, when some anxious parents came for medical advice for a child in fever, he would firstly determine whether it was a "real" or "virtual" disease. If it was a real disease, he would massage some acupoints with certain rules, then asked the parents to continue the massage when they went back home. If it was a virtual disease, he would write something on yellow paper to the parents and told them to do some mysterious motions at midnight. For example, he might tell them: "Coming out of home with this written paper at midnight, taking 50 steps from the door and turn right, then taking 10 more steps and burning the yellow paper. After that, running back home right away, so the child's disease will be cured." It's said that this method was effective. On March 17th of 1999, I knew from the Dragon Brand Temple Fair of Fanzhuang Village that incense-viewers sometimes would cure illness for people. They also classified diseases into "real" and "virtual". If the illness belonged to the former, they would suggest patients to see doctors in hospital, otherwise they would cure them by burning yellow paper or writing signs.

[3] Folklore of "Snip Tail Lao Zhang" and "Snip Tail Lao Li" are the same story, which enjoyed popularity in northeast, north and south China. You can refer to *Legend of Dragon* edited by Wang (1988) about this.

rich family whose surname was Du in the south of Zhao County. He hired Lao Zhang for watering his fields, but did not want to pay much. Angry about it, Lao Zhang told his mother about this and expressed his wishes to go to somewhere else to live. His mother told him that if he moved out, she would worry about the water supply. To comfort her, Lao Zhang inserted a branch in the water urn, and told her mother that when she needed water, she could stir the branch to get water. After he left, his mother once found the urn was dirty and tried to clear it up. However, when she took out the branch from the urn, water spout out immediately and washed the whole town away. From then on, the previous "Wuguo Sibaishe" (means five towns and four villages) in Zhao County lost "Zhangjiaguo" (Zhang Town).

As to Lao Zhang, he went to Shenyang Province (in the northeast direction) and met an officer on his trip. The officer was very kind and asked Lao Zhang to stay in his home. When he knew Lao Zhang was a dragon, he admired him more. But shortly later, the officer had to go to Hengshi to work (which governed Zaoqiang County). He invited Lao Zhang to go with him. Hengshui was much nearer to Lao Zhang's hometown. The officer promised Lao Zhang to build a temple for him; this would be more convenient for Lao Zhang to go back home. Moved by his words, Lao Zhang took the advice and went to Hengshui. The officer truly built a temple for him and molded a statue of him. Since then, people called him "Zhangye" instead, and worshiped his statue for their own wishes. It seemed very efficacious after the worship.

There occurred a summer drought in Li Village in 1903. One day when Li Xibu (a person in Li family) was irrigating lands in the west of village, there came a man in black. He told Li Xibu that Li had a townsman in Hengshui and his name was Zhangye. It was effective to pray him for rain. Hardly when he finished his words, the man disappeared all of a sudden. Amazed by this, Xibu hurried to ask Zhao Laoxiang in the neighboring land if he saw a man in black. Zhao answered that he did not see anybody which made this matter more mysteriouo, so they told this matter to Li Villagers. All thought they should invite Zhangye from Hengshui to Li Village and they pooled money for Li Xibu and Zhao Laoxiang's traveling expenses. Afterwards, Li and Zhao arrived in Heng Shui, and pleasantly knew that there really existed a temple of Zhangye. They went to the temple and left with water. Shortly afterwards, Zhao said that his tobacco pipe was left in the temple and went back to get it. The moment he entered into the temple, he knelt down in front of the Zhangye statue and asked him to go back to his hometown—Li Village. Zhao then left the temple and caught up with Xibu. On their way back to the village, Zhao had been shouting "Zhangye, follow me to go back to your hometown". After getting back to their village, they built a dragon god shed in a temple, and invited people to perform opera and pray to God for the next three days. Several days later, it really rained and only rained in Li Village.[4]

Although Li Qinggang is a person that every villager would ask him for help if they met some difficulties, he is not in charge of the village temple at ordinary times. He only visits it twice a month for incense-burning as well as the temple fair in lunar October 15th. Actually, it's Li Wenshan that manages the temple, who lives just behind the temple. Li Wenshan graduated from the county normal school and now is retired, but handles the temple account. From his words, we can know the present temple was rebuilt in 1989, which was relocated from the original eastern

[4]From the record of *Zhaozhou Annals*, the great drought didn't happen in 1903 and 1899 was a year of drought without rain and snow (Chorography Compilation Committee of Zhao County in Hebei Province 1993: 83). 1899 was neither a year of heavy flooding as the villagers believed. Therefore, the initial invitations for *Zhangye* might originate from rain-worship ritual and it was true that *Zhangye* was firstly invited as God of Rain.

place to the southern one. Interestingly, villagers believed there was a supernatural power supporting the temple rebuilding. In other words, what remained in their memories tended to be those of epiphanies of God, and it was such stories that monitoring their memory (Luo 1997). This can be fully shown in the following story,

> In the past, there was a person whose family name was Ma, he was keen on doing good and was living in our village. One day, he ran into the street and said Zhangye appeared in his dream and told him that he had nowhere to live in the village. After hearing from Ma, many villagers agreed to build a temple for Zhangye, for fearing that he would get angry. Then a person asked, "Where can we find bricks?" Ma said, "Zhangye has instructed me that bricks are in the southwest". With this suggestion, people went in southwest, and found a rich person's house was being demolished in Mijia Town, which was not far away from Li Village. After mentioning what they had come for, the rich man happily agreed them to take the bricks as many as they needed. With bricks in hands, they faced another problem: where to get adobe for the temple? At this moment, Ma said adobe was in the north. Following his guidance, people went to the north and found a family in Dahao Town was building adobe. As expected, they get the adobe free of charge. With bricks and adobe being ready, people asked Ma where to get tiles. Similar to their earlier experience, they found tiles under Zhangye's will. At last, people cut down a few trees, and constructed the temple in Li Village.

The previous village temple was built 100 years ago, but was demolished twice under the influence of the Equal Distribution of Land Reform in 1947 and the Superstition Eradicating Movement in 1953. Later in 1984, when Household Contract Responsibility System was implemented, several old female *Zhangye* followers jointly raised the bricks and set up a tiny temple, in which *Zhangye*'s portrait was enshrined. Then one day in May of 1989, a man named Li Xiaowa suddenly proposed to build a bigger temple for *Zhangye*, and gave the following explanation:

> Once upon a time there lived an old lady. One day Zhangye appeared in her dream and asked her to find Xiaowa to build a bigger temple. She didn't know Xiaowa, so she asked around and finally found me. I was sick and had asthma at that time, but my mom said "Just do it, perhaps you can be recovered", so I rode my bicycle to find some helpers. The village was so big that I didn't know from whom I could seek help, but suddenly, a voice told me that I could go to the first house after turning left. Following the suggestion, I went there and found it was Li Shuangxi's home; then I entered and told him about this. He readily agreed and asked Li Tiexian to join us. Moved by this, I said I would do whatever according to their arrangements. With discussion, we used the bricks left by the demolition of a village refrigeratory, and cut a few trees, while other villagers dedicated their labors or money for the temple. This temple was finally built in September, with a month and six days of construction. After that, we lifted Zhangye's Xingshen (the moving body of Zhangye) from Zhao Jiani's home to the temple, and presented it for worshipping. Xingshen was saved by someone when the previous temple was destroyed, and was secretly sent to Zhao Jiani, Zhao laoxiang's son. As Zhao laoxiang was one of the two persons that had invited Zhangye from Hengshui to our village, it was believed to be safe in his house. To keep it safer, Zhao Jiani ensconced it in the crack of the wall.

From the above two memories, we find public issues like the village temple building were accomplished by using some mystical experiences, such as "being

possessed by village god", so that the whole community could be mobilized.[5] This is because when a person's body is taken over by god, he obtains the "Charismatic authority" (Weber 1997), therefore he has the corresponding supernatural power to dominate others.

As to the resources mobilized in temple rebuilding, Jing Jun had conducted a detailed research from the angle of "symbolic capital" and took two Confucius temples in Dachuan Village, Gansu Province as instances, in his view, four kinds of "symbolic capital" had promoted the revival of folk religion, i.e. etiquette knowledge, word knowledge, historical knowledge and political experience (1998: 7).

In Li Village, the retelling of such supernatural stories did strongly support the village temple to be rebuilt, and the "symbolic capital" proposed by Bourdieu (1977, 1991) was mainly revealed by villager's mystical experiences. Once a person was possessed by *Zhangye*, he or she was empowered to control others, and to mobilize them to make common cause, namely, it was the mystic experience, as the specific representation of symbolic power, that endowed the person with the power to dominate others (Bourdieu 1991).

The present village temple has five south-faced rooms, the western three rooms are as large as halls, while the eastern two are used as storage. *Zhangye*'s muddy sculpture and *Xingshen* are enshrined in the middle of the western three halls, and *Xingshen* would be carried around the village three circuits in lunar October 15th. Two lad-sculptures stand on each side of *Zhangye*'s sculpture, and the eight portraits of Eight Immortals (*Baxian*) are hung symmetrically in the wall behind *Zhangye*. On the western wall hung the portrait of *Yushen* (Rain god), on its opposite wall is *Fengpo* (Goddess of Wind). As to the western hall, the statue of *Longzi* (Dragon's son) and that of *Longsun* (Dragon's grandson) are presented in the middle. And *Shandian* (God of Lightning) and *Leigong* (God of Thunder) are worshiped in the eastern hall. The eastern two rooms were used as utility rooms before, and were emptied to enshrine *Laomu* after the 1998 kermis, with the stored items moved to the newly-built warehouses on the right. Next to the eastern room is the kitchen, which is used in kermis. Outside the hall stand two logs where the aged always gather together to kill time.

Opposite to Zhangye Temple is a small-scale brick-made Laomu Temple, it's so small that can only be seen from outside but not walking inside. From *Li Village Records*, besides *Zhangye*, the second highest ranking god in villagers' view is *Laomu* (see Chap. 2), the next is "*Sanzunshen*", namely *Lvzu* (Lv Dongbin), *Guangong* (Guan Yu), and *Wenchangxing*. Every household worships the "Six Gods in Messuage" (*Jiazhai Liushen*)—*Tiandi* (Heaven and Earth), *Laomu*, *Caishen* (God of Wealth), *Cangshen* (God of Granary), *Zaowang* (God of Kitchen), *Foye* (Buddha), *Guangong* and *Menshen* (God of Door). Some villagers may also enshrine the painting of *Lancao* (Bluegrass), which implicitly refers to *Laomu*. The portrait of god in ordinary families is called *Shen'an*, in which various gods are

[5]Interestingly, people in North China believed in god's possession. In almost every village there were people in god's possession. Studies about the North China Boxers in late Qing Dynasty provided similar information (Zhou 1995; Ke 1998).

drawn in certain order, and the exact number of pictured gods is different from family to family. These portraits are generally handed down from their ancestors, and are passed from mothers-in-law to daughters-in-law. If the portraits are too old to keep, they can be repainted. However, when there is a need to draw a new *Shen'an*, other gods could be added, but those already on the old one must be kept. Just like the old saying, "inviting gods is easier than seeing them off". Besides, when *Shen'an* is to put on the wall, the scripture-chanters must be invited to hold a ceremony, so as to confirm its divinity. As a result, no man dares to hang up a non-consecrated portrait on his own.

6.2 Process of Temple Fair

According to the lunar calendar, October 15th is the birthday of the village god *Zhangye*, as well as the date of temple fair in Li Village. Historians have made many detailed researches about the temple fair in North China (Zhao 1992; Jiang 1996), while sino-anthropologists focus on those in Taiwan countryside, especially how the temple fair associations have formed, as well as their role in establishing civil authority (Seaman 1978; Feuchtwang 1992, 1995, 1997a, b). However, in the following part, I will explore how the religious association wins the authority and its relation with disputes resolving by my fieldwork in temple ceremonies.

On *Zhangye*'s birthday, both Li Villagers and the neighboring folks would offer incense to him, and some would dance to appease him. During this period, some villagers would pray for having children, some for medicine and health, and some make trades to earn money. The most appealing part of the temple fair is its special rituals, which I will introduce in the following paragraph.

Preparing for Food

In Li Village, the formal date of temple fair is lunar October 15th, while the original date was set on lunar January 15th. The date was altered after the temple rebuilding, because people have more free time in October, and more materials from the harvest for worshiping.

Usually people would prepare the temple fair before October 15th. In 1997, I attended the annual temple fair and found the preparation was begun on October 12th. In that day, villagers put a stove in the space between the temple and Li Wenshan's house. The stove was about three-meter long, one-meter wide, with three big pots on it, one to boil water and the other two for cooking. Three vats, with a diameter of one meter, were placed near the stove: one was filled with water and the other two carried the half-cooked vermicelli. Moreover, on the wall against the stove there was a tablet enshrining *Zaowang* (God of Kitchen), with a note read "*Zaowang*'s tablet" hanging on the wall.

In the three days of temple fair from October 14th to 16th, Li Villagers would supply free lunches for fair attendants from other villages. The lunch usually includes some white flour-steamed breads and a bowl of soup with vermicelli, cabbages and puffed tofu. Actually the soup is seen as a dish by locals. For making

the soup there is a complex process: tofu must be cut into pieces and be fried to puffs in the oil, then the vermicelli made of sweet potato must be put in the boiled water for a while, then scooped out in cold water; meanwhile, cabbages should be cut into strips and put in a basket. The above preparation would take two days, and it must be ready on October 14th.

There is a division of labor in making food. More than ten families make steamed buns (*mantou*), and deliver them to the dinning place before noon. The "dishes" are cooked by chefs, who are from different villages and cook for the temple fair every year voluntarily. After putting some oil in the pot, chefs add cabbage strips in and then some water, which is followed by vermicelli and tofu puffs. When the broth boiled, soy sauce, salt, monosodium glutamate and sesame oil will be added in the pot. When it is time for lunch, each person could get a bowl of soup and a steamed bun, but they could get more if they want. Since several thousand people may attend the lunch each year, the cost for vermicelli, tofu, cabbages, oil, and steamed buns constitutes the largest proportion in the event's expenses. In 1997, food spending was up to 77.72% of all (see Table 6.1).

Table 6.1 records the food expenditure in 1996 and 1997, which shows a decline by 500 yuan over the previous year. According to my investigation, one important reason is that villagers earned less from pear trees in that year, so they donated less; the other reason is the sagging economy in the entire pear zone made less people from other villages come to attend the fair, so fewer need of food for lunch. Sacrificial rites must be held to *Zaowang* (God of Kitchen) before lunch, and the scripture chanters in Li Village always sing the curtain scripture in front of it, it goes as follows,

Scripture for *Zaowang*
Inviting the great god into the kitchen,
Guarding the pot everyday,
Folding hands to worship Zaowang,
Firstly, worshiping your coming from heaven,
Four meat dishes and four vegetarian dishes, you eat first,
As this scripture is left by the God of Kitchen, let's read it for him,
In day the kitchen is full of woods, at night the kitchen is with nobody,
Xishen (God of Luck) frequently visits, and just sitting on the pot,
Furu (God of Fortune) frequently visits, making more steamed buns and dishes,
Picking up the spoon and stirring it three times, and making a bowl of food for Zaowang,
Picking up the spoon and raising it up, no matter how many people need, the food is enough to eat.

During this process, chefs should move spatula in the pot according to the scripture, or to fill out a bowl of dish for *Zaowang*. After chanting, people can eat, if

Table 6.1 Expenses for Li village temple fair in 1996 and 1997

	1996			1997		
Item	Amount (*jin*, 0.5 kg)	Cost (yuan)	Proportion (%)	Amount (*jin*, 0.5 kg)	Cost (yuan)	Proportion (%)
Steamed Buns	675	735	39.56	542	488	37.26
Vermicelli	150	255	13.72	120	180	13.74
Tofu	152	131	7.05	146	131	10.00
Cabbage	1179	53	2.85	587	79	6.03
Oil	36	147	7.91	34	139.9	10.68
Millet	45	54	2.91	45	45	3.44
Others		438	23.57		246.8	18.84
Total		1858	100		1309.7	100

someone eats before chanting, he would be condemned, so nobody including the chefs is permitted to eat before praying to god.

Other than providing food for people who attend the temple fair, villagers also need to offer special food to god. The food for god could be classified into two kinds—fried and steamed, which are prepared by women. To make such food, a small stove is lighted in front of Zhangye Temple, with a pan put on the stove. Besides the stove is a big wooden board, which is used to put dough. The kneaded dough is made into an oval shape, and a flower-engraved paper-cut is put on dough to cut the pattern out. Apart from flowers, dough is also cut into the shape of deer. When the oil is boiled, all the engraved dough would be fried in the hot pot.

"Fried flower" and "fried deer" need to be done by the people with due expertise. The time to cook this type of dough should not be too long or too short so that the "fried flower" or "fried deer" can be able to "stand" on its own. The temple fair generally needs 70 to 80 sets of fried offerings; and one set means a fried deer with a fried flower on its back. Besides the offerings mentioned above, fried dough twist is also a must. As it is easier to fry, every woman can take the job. *Zhengdagong* (a steamed offering) is usually made by one special family, because people just need one, it takes the conical shape, and has eight layers from bottom to top, with each layer being decorated by flour-made animals like pig or sheep. It should be served to god by the representative of temple authority, like scripture-chanters.

God-parade and God-inviting

Other than food preparation, decorating the temple fair is also an important job, and its core is to set a tent (*jiaopeng*) in front of the temple.[6] Villagers use wooden poles

[6]Character "jiao" in "jiaopeng" shared the same meaning with that in "jiaoji zhongzhi" (a sacrificial ritual). But there exist various understandings on this sacrificial ritual. Scholar Liu Zhiwan from Taiwan believes that its meaning can be understood in four ways. The first is sacrificing, which occurred before the appearance of Taoism in Han Dynasty. The second is to worship gods

to make a frame, and cover the frame by tarpaulin, then plug colorful flags and long pieces of couplets on the poles. Next is to decorate Laomu Temple and Guanye Temple that stand across Zhangye Temple with new colorful paper. When some villagers are busy with decorating the temples, the rest would fold paper ingots or stick paper flowers, so as to enshrine gods during the temple fair.

God-parade is held in the morning of the lunar October 13th. In this ceremony, four men would carry the sedan chair around the village for four circles, with *Zhangye*'s *Xingshen* being shrined in the chair. As mentioned above, there are two statues of *Zhangye* in the temple, one is three-meter high, which cost 400 yuan to make it in Gaocheng County during the period of temple rebuilding; the other is called *Xingshen*, about half-meter high, and was previously secretly preserved by Zhao Jiani during the movement of "eradicating feudalistic superstition", so *Xingshen* is believed to originate from the beginning of the temple. God-parade reminds us of the Chinese attitudes towards gods and officials in the scenes depicted by Wolf (1978) and Feuchtwang (1974a, b), in their description about the late Qing Dynasty, the Chinese revered gods in the same way for officials, so their attitudes to gods implied their opinion to officials. The sedan chair used to carry *Zhangye* is very similar to the one in our mind that carried officials in Qing Dynasty (Ahern 1981: 3). It's regrettable that it rained on October 13th of 1997, so the god-parade ritual was canceled in that year.

After the God-parade, people would present *Zhangye*'s *Xingshen* in the center of tent (*jiaopeng*), which is called "qing *Zhangye* rujiao" (inviting *Zhangye* into the tent). At the same time, other gods such as *Fengpo* (Goddess of Wind), *Huoshen* (God of Fire), *Yushen* (God of Rain), *Lushen* (God of Road), *Laomu* and *Guanyu* are also invited. God-inviting is accomplished through chanting scriptures. Originally there was no scripture designed for *Zhangye*, while the scripture-chanters later produced one.

***Zhangye* Scripture**

Once entering the temple, raising your head and seeing Zhangye sitting on the liantai (lotus agora),
Sitting while smiling, he is in emperor's hat and dress,
Jade belt in his waist draws dragon in water, shoes on his feet depicts the clouds in heaven,
Why does he come into the earthly world? To bless people peace,
More tender breezes and fine rains, bad weathers like hailstones dissipate by themselves,
Crops grow well as worms and diseases are eliminated, harvest are guaranteed in each year,

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in outdoors at night, which appeared in the late Han Dynasty. The third meaning is associated with the prevalence of Taoism in Tang, Song and Ming dynasties, which named the altar-setting and praying activities by clergies or Taoists as "Jiao". The fourth meaning is that of present, namely, the large-scale celebration held to thank gods. Thus, it is an extended meaning from Liu Zhiwan's term "seeing village gods as Jiao" (Liu Zhiwan 1974: 7).

Cleaning the hazards in orchard, making sure pears ripening during the mid-autumn festival,
Kind-hearted as Zhangye is, he blesses everyone healthy and strong,
Famous as Zhangye is, people from every direction gather in temple to worship him,
Zhangye's gratitude is deeply remembered, so people reward his kindness in October 15th.

Then people would chant *Quanfojing* (a Buddhist scripture) and *Shizhuxiang* (a scripture named after "Ten incenses"),[7] which are served for all gods and can be read in front of any of them. But some specific scriptures are designed for certain

[7]The two scriptures were as follows:

All Buddhist Scripture
The first joss stick used to invite the triple world, Buddhist and ancestor, Bodhisattva and arhat to come here.
The second joss stick used to invite Shizun, Hierarch Youming, Dharma Protectors and their right-hand gods.
The third joss stick used to invite Wangmu, Jiutian fairies, God of Longevity, Eight Immortals.
The fourth joss stick used to invite Dizang, Hierarch Yuancong, five ancestors, four gods of location, and the ten kings of hell.
The fifth joss stick used to invite Xifang, Santian Laozu, Dharma progenitor, Seymour progenitor.
The sixth joss stick used to invite Sumu, Sumu Tinadi, Putian, Anxingdou, Haohua Yunzhi.
The eighth joss stick used to invite Xifang, Santian Laomu, Banzhen Laomu, Yanguangmu, Songzi Laomu.
The ninth joss stick used to invite Xiapanmu, Suimu, Genmu, Leimu, Shanmu, four dragon gods from each sea.
The tenth joss stick used to invite Pangong, Santian Shengzu, Medicine Kings and saints, to give medicine and save people.
After inviting, all gods please sit in its place, and receive the joss sticks consecrated by us.

Ten Joss Sticks
The first stick is consecrated to the above, as Yuhuang sitting there.
The second stick is consecrated to the below, as our masters are there.
The third stick is consecrated to the divine mountain, as Protectorate is there.
The fourth stick is consecrated to the divine land, for they would perform magic power.
The fifth stick is consecrated to the Oriental Sea, rivers and seas.
The sixth stick is consecrated to the wind that driving boats, may all water safe.
The seventh stick is consecrated to the Kongzhan, wish men and women behave according to morals and ethics.
The eighth stick is consecrated to the Eight Diagrams, wish the universe go well.
The ninth stick is consecrated to the ancestors, wish them walk on the western road to the heaven.
The tenth stick is consecrated to the world, wish sunshine arrive at each corner.

gods, and must be chanted to the correspondent god, like *Zhangye* Scripture, *Lushen* (God of Road) Scripture.[8]

Other than gods (*shen*), immortals (*xian*) are also invited, because in the local's mind, god is different from the immortal. God lives in heaven and can spy on human activities, while immortals are chivalrous people who live somewhere in this world, who have super power and always do good things for people. As these kind-hearted and knight-errant people become immortals, they would come to solve problems in this world. Thus, scriptures for inviting them are full of praises for their righteous actions that can rescue and aid human beings.[9]

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[8] *Lushen Scripture* is as follows:

***Lushen* Scripture**
God of Road comes from all directions, dress in red and sit to give fortune;
Sat in sedan chair carried by people, he quickly arrives at the cross-road;
Left "Lushen Scripture", he stands at the road;
Good people guide the way, God of Road will help them back home;
Bad people walk on road, God of Road would ignore their business;
(God of Road's words) All people stand above me throughout the year, while nobody shows his gratitude to me;
Only receiving good people's thanks, and placing Dagong on the road;
(People's action) Woodblock knocks once, and golden bell rings three times to consecrate the god;
Which god people interrupted, it's the Bigger Dipper in Heaven;
The Bigger Dipper looking downwards, finding good people walking in the front;
Then the god asked him, what he is asking for, benefits or longevity, offsprings or provision for the future;
"Neither money nor life, I beg for an increase in my lifespan," answered the man,
To increase your lifespan to ninety-nine, please read this scripture throughout the year.

[9] The scripture read by Li villagers is as follows:

The Invitation for God
Inviting god to come, happily sitting above the stove,
Wearing divine dress and flowers, and high buildings are rising,
No matter the pilgrim is old or young, male or female,
God would help all those who seek help,
Magic methods that could save the needy and distressed hidden in the stove,
Principle followed by gods is to grant whatever is requested;
After installing the stove, god starts to see patients,
Hidden in the stove is a messenger named Ma Tong,
Who would mount clouds and ride mist to deliver people's worship,
Incense shows whether the disease is real or virtual,
Incense indicates whether it's lucky or unlucky,
Both the poor and the rich are treated the same by God,
Neither would he despise the poor nor carry favor with the rich,
God would drink neither the consecrated tea nor sacrificed water,
The rich sacrifice after being cured,
No matter board or red cloth is inscribed, all would satisfy the God.

Since the god-parade is usually finished at noon, and *Zhangye*'s *Xingshen* must be taken out of the the sedan chair and placed it right in the tent by *xiaowa* in the end, the tent should be completed before the noon of October 13th. *Xingshen* is enshrined in the middle of altar; behind it is the newly-painted *Zhangye*'s portrait, with *Guanyin Laomu*'s portraits being placed at both sides. Under the *Zhangye*'s portrait there are five bowls, which are all filled with millets inside. People usually put the fried deer in bowls one by one, and insert fried flowers in each deer, so it looks like flowers are flourishing on the deer.

There are also five bowls in front of *Xingshen*, different from those under the portraits, these bowls are with vegetarian offerings, including vermicelli, tofu puffs and so on, and a steamed bun is put above the vegetarian dishes. In front of the bowls are the steamed offerings. On the right side of *Xingshen* is the Gold-ingot Palace (*Yuanbaodian*), made up of many colorful paper-folded ingots. Woman who is responsible for decorating offerings tell me half-jokingly, "the Gold-ingot Palace is the bank prepared for *Zhangye*". On the left of *Xingshen*, there placed a vase with silk flowers.

Portraits of other gods are hung up on the tent's walls, such as *Yushen* (God of Rain), *Longzi* (Dragon's son), and *Longsun* (Dragon's grandson) on the right hand, and *Fengpo* (Goddess of Wind), *Shandian* (God of Thunder) and *Leigong* (God of Lightning) hung on the left. Below the portraits are offerings such as fried dough twists. The biggest censer is placed in front of the altar with five incenses inserted inside. Behind the censer is a wooden box for donation, which is to collect *xiangyouqian*. Since local villagers believe "stirring vat avoids sores, and stirring urn dispels disease", two small urns are placed at the tent's gate, with a stick inside. After worshiping *Zhangye*, people usually stir the urn for good luck. And that's all about the spatial arrangement of the tent (see Fig. 6.2).

Consecration and God-guarding

Before the temple fair in 1997, several gods' portraits were repainted by a famous artist from Xinle County, including a two-meter wide and three-meter long drawing of *Zhangye* as well as seven or eight new portraits of the *Leigong*, *Shandian*, *Fengpo* and so on, as they were new, a consecration ceremony must be held for those portraits. This ceremony was held in the afternoon of October 13th, with Zhao Xiuhua and other scripture-chanters in charge of it. Before the ceremony, people should prepare the musical instrument well, which was made by passing eight threads in different colors through seven needles and eight copper coins, which means "opening god's eyes by seven jewelries (jewelry is pronounced as "zhen", and is harmonic with the tone of needle) and eight treasures (it refers to coins), bringing sparkling light to the earth". During its process, a skillful old lady would fasten the so-called "*qizhen babao*" (seven needles and eight treasures, which sounds like treasures in dialect) on the top of a thin stick and roll the stick before the

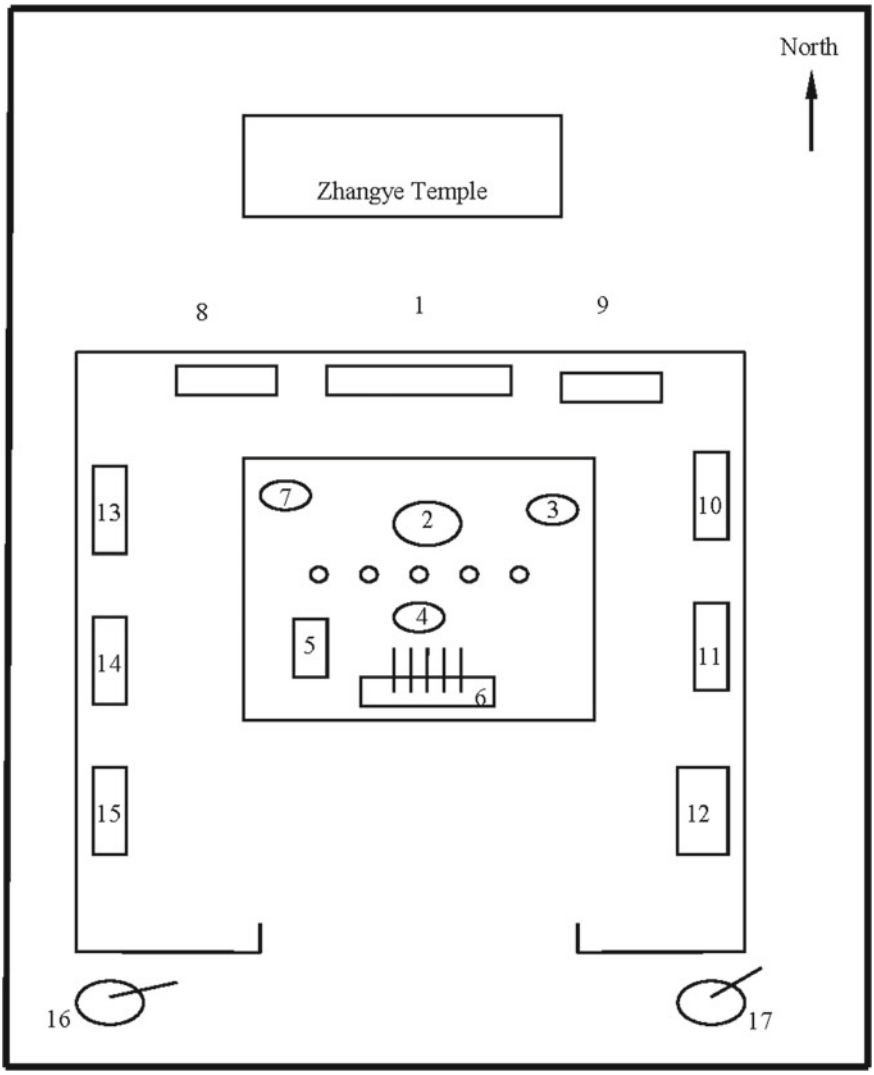

Fig. 6.2 Spatial location of each God in tent. *Notes* 1. *Zhangye*'s portrait; 2. *Zhangye*'s *Xingshen*; 3. Gold Ingot Palace; 4. *Dagong*; 5. Donation Box; 6. Censer; 7. Flowers and Vases; 8/9. *Guanyin Laomu*'s portrait; 10. Statue of *Longzi* (Dragon's Son); 11. Statue of *Longsun* (Dragon's Grandson); 12. *Yushi* (Rain god); 13. *Leigong* (Thunder god); 14. *Shandian* (Lightning god); 15. *Fengpo* (Wind goddess); 16/17. Urn

god's eyes, while a group of people behind him were chanting the scripture of Consecrating God.[10]

After the newly-painted portraits were consecrated, it was almost time for supper, so people returned to the temple and chanted scriptures in front of *Zhangye*, and then went back home for dinner. Only three older women were left in the temple to keep watch at night, also known as a vigil over the god. Vigil has two functions: one is to prevent people from messing offerings or other things at mid-night; and the other is to enshrine *Zhangye* by offering incense and adding lantern oil at intervals. People who stay for vigil were volunteers, one of them was a 78-year-old woman called Xiumei, who had kept vigil every year since the temple rebuilt. She said she once was seriously ill and came here to ask *Zhangye* to save her life, she promised in front of *Zhangye* that if she could be cured, she would keep vigil for him every year after that. Mysteriously, she was gradually recovered, so she insisted to serve *Zhangye* by night watch. She didn't know how to chant scriptures nor manage the temple previously, but by her hard work, she could smoothly accomplish both the above jobs now.

Welcoming the Outsiders

During the three days between October 14th and 16th, people from the nearby temple associations would attend the Li Village temple fair, which was called

[10]The scripture of *Consecration of Buddha* reads as follows:

Consecration of Buddha
Above is the Renda, bright light and candles making it like the heaven,
Burning incense and flaming candles to welcome the God sit in the middle,
Sewing with seven jewelleries and eight treasures, please let me to bright your face,
The light penetrates out of Sanjie, where presents a golden god,
The golden god uses steel needle to consecrate the head, and a golden crown with dragon carvings is put at the god's head,
The golden god uses steel needle to consecrate the eyes, which become bright and sparkling,
The golden god uses steel needle to consecrate the ears, so they could hear sounds from all directions,
The golden god uses steel needle to consecrate the nose, so air goes smoothly in and out,
The golden god uses steel needle to consecrate the mouth, so it would speak true words,
The golden god uses steel needle to consecrate the heart, so it would be clear,
The golden god uses steel needle to consecrate the shoulder, which will be covered with dragon cloth and embroidered robe,
The golden god uses steel needle to consecrate the hands, giving all human the right direction,
The golden god uses steel needle to consecrate the feet, from then on, the god would walk all sides for the sake of living beings,
After I finished sewing, god will come to the new temple,
Seeing the place that I prepared for him, the big god sits in the middle,
Burning five incenses and placing them in censer, god returns, and everything goes well.

ganmiao by the locals. During the ceremony, October 15th was the liveliest day. After breakfast, Li Villagers would come to the tent, offering new incenses or presenting offerings in order. Around eight o'clock, scripture-chanters began to sing the corresponding scriptures in front of each god, and it was said more than 30 classic scriptures would be chanted in the temple fair.

After that, the chanting group would go to the slope facing the village entrance, and welcome those from other temple associations. The outsiders usually came by tractors, since one tractor could take a dozen on average, people from the same village might be sent here by more than two tractors. We can see from Table 6.1, Fanzhuang Village dragon-tablet association sent the most people (26 persons) in 1997, while the rest village associations sent about over ten people. Tractors would stop at the village entrance, which was nearly 300 m away from where Li villagers waited for them.

As soon as people from other villages got off from tractors, they would take their instruments like drum, gong, cymbals and Tangtang drum to perform. They would form in a certain queue and walk while performing toward the slope where Li villagers were waiting. At the same time, the scripture-chanting group in Li Village would exultingly beat the drum on the slope. Two ladies in their 60 s would carry a long desk in the center of the road between village entrance and the slope, with a plate filled with offerings like dough twists on the desk. When the outsiders walked up to the desk, one lady who carried a basket full of offerings, incense and paper would walk out of the queue, put the basket high above her head, and worship in the direction of the tent, and then put the basket on the desk. After that, the desk would be moved to somewhere else. At that time, another lady from Li Village who was dancing all the time behind the desk would come to the basket-sending lady, and dance with her face to face. They would dance in a flower-inserted style, with one dancing to one side, and the other twisting to the opposite, vice versa. At this moment, the lady from Li Village would stand back constantly, while the outsider would lead her queue wriggling forward. The most attractive part was their improvisational performance, during which they seemed to be both in competition and in cooperation, and a vigorous atmosphere was created anyhow. When the lady from Li Village standard back to the underside of the slope, they stopped dancing, and then bowed to each other, which signaled the end of the ceremony. The lady in Li Village would return to her original position and waiting for the next reception. During this period, music was always on.

After entering the village, outsiders would come to the tent, and chant scriptures to *Zhangye* and other gods, which always took one or two hours from the beginning to the end. Then they would offer donations together with an invitation to the temple through the counting-house. The invitation was usually written in a strip of yellow paper with words of "Invitation: Honorable guests, please attend XX temple fair of XX Village on XX day". Manager of Zhangye Temple would accept the money, write down the village name and the amount of donated money on the account book, and then keep the invitation. Keeping track the amount of money

would help the villagers to pay back when they were going to attend temple fair of other villages. After the completion of all these rituals, outsiders would give their performance in front of the temple, like Yangko dancing and scriptures changting. They usually read scriptures in story narration like *Caisang* (Mulberry-picking), *Wuming* (Unknown) and *Luoshan* (Falling-fan).[11] After the show, Li villagers

[11] Scriptures of *Mulberry-picking*, *Unknown* and *Falling-fan* are listed below,

Mulberry-picking

Picking mulberry leaves in January, the new-married wives visit parents-in-law, though she dresses in red and new clothes, she should kowtow on the floor to show her love and devotion;
Picking mulberry leaves in February, swallows flew back from the south to set nest, wild geese also nest here, those coming are much more than those leaving;
Picking mulberry leaves in March, the land becomes a carpet of golden flowers, the older sister picks flowers to worship Buddha, while the younger do it for Buddhists;
Picking mulberry leaves in April, almost every household breed silkworms, the older sister breeds them to weave cloth, while the younger to weave silks;
Picking mulberry leaves in May, boats carrying materials drive in rivers, with man sitting at the bow and woman in the stern, both are enjoying a happy time;
Picking mulberry leaves in June, it's so hot that almost everyone holds a fan in his hands, demanded by parents-in-law, wives still need to cook food in kitchen;
Picking mulberry leaves in July, the rain is so heavy that the road in front of the house turns into a river, uncautiously stepping into the mud, the new embroidery shoes are smeared;
Picking mulberry leaves in August, almost every household carries sickle to do fieldwork, the sharp sickle helps to work well, while the blunt one slows my working speed;
Picking mulberry leaves in September, almost every household makes wine, and the good wine would be used to worship Buddha, and consecrate the first three cups to Buddhists;
Picking mulberry leaves in October, frost beats the leaves, making them falling off to the flat land, it should be waited until the next spring to have new leaves.

Unknown

In the first day of January, several elders, including Zhu Geliang, Saint Confucius in Shandong come here;
In the Dragon Heads-raising Day of February, Lv Dongbin gets drunk in Yueyang Tower, Han Xiangzi goes downhill with basket, delivering all living creatures from torment;
In the third day of March, the Queen Mother of the West celebrates her birthday, and fairies in Jiutian come to offer felicitations, followed by the two gods He-Hui,
In April when the wheat turns yellow, twenty-four filial Exemplars should be followed, and a man whose surname is Ding carves wood for his mother to show his filial piety;
In Dragon Boat Festival in May, White Snake and Green Snake reveal their true face, which frightens Xu Xian to worship in temple;
In the hottest day in June, Liu Quan replaces the Emperor Li Shimin of Tang Dynasty to send pumpkins to the hell, as Liu loses his way, his dead wife revives in new guise of emperor's sister Li Cuilian;
In the seventh day of July, it's the time that the Herd-boy and Weaving-girl could meet once a year, the Herd-boy goes to the the eastern river band of Milky Way, while the Weaving-girl waits in the western band;
In Mid-Autumn Festival of August, Li Sanniang has lost her son for thirteen years, and Wang Sanjie has lived in the cold cave for eighteen years, they come to Wujia slope to pick wild greens;

would distribute each outsider a red cloth, with which people could have free lunch in temple fair. Afterwards, the outsiders would go back home, hoping that Li villagers would visit their temple fair in the future.

During the three days of temple fair, outsiders would entere Li Village for the rites at any time, and Li villagers would welcome them according to the same procedures. Every time Li villagers perform the welcome ceremony for those from other villages, all the villagers would gathere together excitedly. In each of the shows, both the female dancers and male drummers would produce a kind of etiquette repeatedly, because the welcoming ritual and that of seeing off could reveal their imagination for etiquette order hid at the bottom of their heart, namely

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In September when chrysanthemums are in bloom, Meng Zheng is expelling ghosts in house, and Jiang Taigong is busy in selling food, while Zhu Maichen is cutting firewood;
In October, people are happily waiting for the Spring, Cheng Yaojin is making and selling bamboo rakes, Chai Wenjin carts to sell garlic, and a person whose surname is Liu is selling straw sandals;
In November when it snows, Wang Xiang lies on the icy lake to catch fish for his sick step-mother, fortunately a pair of carps bounce out of lake, which are caught by him;
December is the end of the whole year, when it's time to worship all ancestors, Li Yuan (the founder of Tang Dynasty) rebels to build a new empire in Taiyuan, later Qin Qiong saves Li Yuan from danger in Lintong Mountain, while Wu Han tearfully kills his beloved wife at the expense of morals in Tongguan;
December is the end of the whole year, I earnestly hope gods would bless me, bless the village safe and peaceful, and a harvest in orchard and land, then I will sacrifice more offerings to gods.

Falling-fan

One golden fan is seven-inch long, taking shelter from rain and strong sunshine, so I hold it in my hands, going to main room in temple to worship Jade Emperor;
Two golden fans having two golden sides, with Avalokitesvara and lads painting on them, so I hold the fans in my right hand, taking colorful handkerchief in left hand;
Three golden fans take shape of flower, with the scene Liu Quan sending pumpkin painted on it, he sends food to the hell, moving the god to let his wife and him revive;
Four golden fans are made exquisitely, with butterflies and bees on it, bees are flying in garden, while butterflies are dancing in broad space;
Five golden fans are made long, Erlangshen carries mountains to cover nine suns, until it remains the only one, the Queen Mother of the West comes to pick mulberry leaves;
Six golden fans are made firmly, with the two sworn brothers Jiao Zan and Meng Liang painting on it, both returned to the Hous of Yang, starting to work for Yang Liulang;
Seven golden fans are made peculiarly, with the Herd-boy and Weaving-girl on it, they have to wait for the July 7th to get united; peculiarly
Eight golden fans need eight sticks, handy men compete to make their man-made fans convenient to use, though fans are not valuable things, they can drive away the heat in summer;
Nine golden fans are very tall, with a god standing at the divine bridge, I dare to ask where Guangong is going to, he responds to play a big knife on the bridge;
Ten golden fans are united as a round, with blue sky, sun and moon on it, not knowing where they are going to, the moon at sky just becomes more and more crescent.

their pursuit for the order in cosmology. And this order can be embodied perfectly in the final ritual of sending off gods and ghosts.

God-sending and Ghost-sending

In the morning of October 16th, when the temple fair participants from far and near villages gradually left after lunch, the bustling village became quiet. Putting off the kitchen fire, people began to take down the temporary stove. Then they would carry a basket with dishes from the fair to the space in front of Zhangye Temple. Meanwhile, people in the temple were busy with moving various offerings (including the offering for which that have spent two days to make) to the space and arrange them in the west direction. Besides offerings, the Gold-ingot Palace and paper flowers were also thrown to that place. Finally, all the stuff mentioned above was piled up into a big paper-pile. At this moment, villagers were seemed to be very mysterious, neither laughed nor teased each other, but only whispered once a while with a stern look. The temple leader now had the privilege to curb the ill-suited behaviors, for instance, she would stop the naughty kids from secretly taking offerings on the ground, not to mention those touching paper flowers. Moreover, she would monitor people's standing position, and relentlessly condemn away those blocking the road to the west. I was actually overwhelmed by the sudden turn from carnival to silence. When I tried to raise questions with curiosity, I was also stopped by the leader, because speaking was forbidden at that time. In a word, everything was mysterious!

About one hour later, the previous paper pile would be gathered into a colorful paper mountain, with the gold or silver ingots, incense and food offerings (including steamed buns, biscuits, cakes) being thrown into it by villagers. When there was nothing to throw, woman responsible for frying offerings would start to burn the paper mountain. At that time, villagers would kneel around the brightly burning fire, chanting scriptures or beating drums, and one person would stir up the fire with a long wooden stick to make it brighter. When the fire was going to burn out, Li Qinggang who kneeled on one side would shout "dharma, amitabha" (*Damo, e'mituofo*). After several shouts, the whole ceremony came to the end. At this time, everyone would rush to the unextinguished paper mountain to grab the burning offerings. People who got more would hand out to those who got none, so that each could have the god-given gifts, imaging their future happy life in mind. According to villagers, having such food could eliminate misfortunes and prevent themselves from illnesses.

The above literary narrative is to reveal the god-sending ritual in Li Village. One noteworthy point is that chanters would repeatedly sing a scripture called "god-sending" from the fire-igniting to the fire-extinguishing,

> Standing up the moment hearing the words, going out of the door after three firecrackers.
>
> Saddling three thousand good horses, followed by Leigong and Shandian.
>
> Many generals and soldiers will guard the god, with each holding a gun in hands, nobody dares to close the devotees.

In villagers' cosmology, god is scattering in the sky. So they use the Chinese character *you* (touring) to describe how gods leave. When people invite gods from heaven to their homes for peace and good luck, gods become their household deity, or called *Jiashen* (the domestic god). To welcome them, people should invite artists to paint gods on a rectangular piece of cloth, which is named *Shen'an* (the portrait of god). It should be placed in the middle of the first central wall and enshrined after the consecration ritual. On the first and fifteenth day of each month, people should change offerings. As to offerings, fruits like pears or apples are included because they can stay fresh longer, other perishable offerings like steamed buns and dumplings are always prepared but would be eaten by people after the ritual. Not every household in the village hangs *Shen'an*, overall, it would be seen more frequently in the elders' house. The size of *Shen'an* is different, some may only paint *Laomu*, while others may paint a dozen of gods on it.

Not only families, but also the village needs to invite gods, who may stay in the village temple for a long time and enjoy the offerings on the first and fifteenth day each month. During the temple fair, people would invite village gods to take their seats in the tent symbolically, as well as those all around the heaven. There are corresponding rituals to invite these gods, and the core is to chant Door-opening Scripture,[12] which is a must when village temple opens. I won't analyze these scriptures in detail, because this ritual is only seen as the beginning of "inviting-enshrining-sending gods", and the implicit logic or moral meaning of the scriptures is less cared. Mixed with the drum

[12] *Door-opening Scripture* reads as follows:

Door-opening Scripture
Iron tree just has one blossom, and the god gives me a bronze lock;
Going to the west to get the key, I meet dangers and difficulties at the beginning;
Decorated with golden girders, candles and tablets, I ask the Buddhist the reason why he doesn't bring the key to me;
He replies that this jade key is a unique treasure, which he keeps with him throughout the day;
Heaven and earth come clear into my eyes, and I see the two doors of the temple;
Opening the door, I find the temple is vast and clean, and the god is sitting in the middle;
The god prosper both male and female, blessing them safety and happiness with his natural benevolence;
I open the treasury vault which is filled with divine flowers, and take Five Words Classics out;
Those who read this scripture would avoid being sent to the hell;
As I have come here, I earnestly and respectfully clean the old temple with my hands;
The dust cleared by me turns into the cloud in the sky;
After three sounds of the inverted bell, the god enters the Buddhist temple, with lighted candles placed at the altar;
Joss sticks in censer and candles on altar, the flowers in vase are in blossom all the year round;
Offerings are served in altar every day, and three bowls of green tea are offered to Maitreya;
After inviting all of the gods, I go back to the temple to read scriptures.

beats, the chanting tune, and prayers' worshiping behaviors, scriptures could produce a magic effect at the temple fair.

God-sending ceremony ended at the moment that the paper mountain burned to ashes, then came to the ritual of ghost-sending. With drums beating again, people in the temple fair would automatically stand in a long queue. Xiumei, who had kept vigil for three nights, stood in front of the queue and held a bunch of incense. Two men stood behind her, and carried the basket of dish, with the basket-lifted stick wrapped up with pink paper. They were followed by the scripture-chanters as well as flag-holders, and then the villagers. All of them were to send ghosts, and their queue was nearly 100-m long. They would march to the west of the village in silence along the way. In that scene, what people could hear was nothing but the sound of drums and trumpets. When they arrived at the western exit of the village, the long queue stopped, Xiumei and the other two men started to ignite candle and place offerings.

Offerings were always put in the aisle from east to west. In the eastern end of offerings, one bundle of incense stood by each side. Behind incenses was the barrel of meal, followed by four candles that stood in two lines. Half-meter away from the candles placed three steamed buns and three eggs, serving as offerings for ghosts. Behind them were three small wine-filled handless cups, next to which were paper-heaps made of a variety of paper offerings, whose average size was much smaller than those in the village temple. After such arrangement, the chanting group began to read ghost-sending scripture as follows:

Ghost-sending Scripture Inviting Patriarch to bless us,	
Saying oracles while opening divine eyes,	I respectably welcomed Patriarch.
Inviting him to the divine seat,	I asked Patriarch to bless us again.
Golden helmet on head,	patriarch majestically dressed in red.
Green riband lined on his waist,	his shoes were dark red, with white clouds on them.
His divine bow was with three strings,	killing demons and ghosts in a sudden.
If you want to know who I am,	I would tell you I was sent by Patriarch to ask for offerings.

While chanting, Xiaowa was burning the stacked paper. At the same time, a man would stir the meal bucket for three times, and split out the meal to the west, and then chanted "eat and drink well, all the way walk well" (*chihao hehao, yilu zouhao*). Under his guidance, people immediately turned back and walked to the village, in their way back, they were prohibited to look back, for the fear that ghosts might follow them.

Villagers believed ghosts would share the same needs with them and take eating as the most important thing. It could be seen as living people's psychological comfort for the actual living conditions, in a deeper sense, the psychological impetus in the ritual of serving food was to reflect or vent their inner anxiety (Luo

and Zhao 1997a, b). Certainly, another function was to restore the normal order in earthly world, as ghosts would go back to where they should stay after enjoying sacrifices (Yoshio 1998: 217–218).

After the ghost-sending ceremony, everyone returned to the temple, and a woman would light up loess-made yellow paper under each god statue. If its ash rose to the air, it indicated that gods were satisfied and returned to the village temple for rest. If not, people would ignite more paper until the ashes went up to the air. After knowing that gods were satisfied, people immediately dismantled the tent, and the aged would distribute the rest fried offerings to children who had been waited outside. Until then, the annual temple fair came to an end.

6.3 Collaboration and Reciprocity

In above pragraphs, I have presented the religious rites in Li Village, so as to show how the social space is constructed by rituals. Undoubtedly, it's also a thought-provoking point to know how villages contact and transact with each other,[13] because an obvious reciprocal relationship is embedded in the connection among temple associations of different villages. We can start from Table 6.2, which lists the name of the associations that attended the temple fair in 1997.[14]

The statistics in Table 6.2 are analyzed from three perspectives, time of the village temple fair (spring, summer, autumn, winter), its relative location to Li Village (east, west, south, north, southeast, northwest, northeast, southwest), and its distance from Li Village (within 2.5, 3–5, 5.5–7.5, 8–10, 10.5–12.5, and 13–15 km).

From it, we know villages near to Li Village mostly hold their temple fair in spring. Among the 51 villages, 34 of them select spring as their temple fair-holding time, which accounts for 67% of the total. Geographically, most of the attended villages (20 in total) are in the northwest and northeast of Li Village, accounting for 40% of the total (as Fengjia Laomu Association is from Li Village, it is excluded from the total). As to the distance, 41 villages are within 7.5 km from Li Village, accounting for 80% of the total. As to the spatial distribution, the attended villages are in the northwest and northeast of Li Village. Such spatial connection is ensured by money donating and constitutes a mutually beneficial relationship. It seems that each village can draw a temple fair network diagram based on the information of attending villages (Fig. 6.3).

[13]The survey conducted by Liu Tieliang and Zhao Bingxiang in Hebei Jingjing County named the relation of different villages' collaboration as "inter-village organization" (Liu and Zhao 1997), which also includes the collaboration ritual held among those organizations in Li Village fairs.

[14]This statistic was kept in the earlier records of Li Village Temple. It recorded the exact amount of money donated by other temple organizations in 1997. The distance among villages hadn't been geographically measured, but was recorded according to the villagers' estimation. As to this issue, no matter which villager you ask, they would give you a similar answer about the distance. These figures I listed here are based on my interviews with the villagers.

Table 6.2 Statistics of the temple fair associations attended Li village temple fair in 1997

Name of Temple Association	Location	Distance from Li Village (km)	Exact amount of donation (yuan)	Temple fair date (lunar calendar)	Number of attendants to the fair
Yanghu Jade Emperor Association	South	6.5	5	January 9th	10
Shuangmiao Dawang Association	West	15	2	January 13th	5
Dasizhuang Association	East	3	5	January 15th	19
Yanghu Temple Association	South	6.5	5	January 14th	20
Beilonghua Eastern Association	Northwest	5	3	January 15th	13
Dama Association	Northewest	12.5	20	January 16th	26
Xianmenlou Association	Southwest	5	6	January 17th	12
Kongmuzhuang Western Association	Northeast	7.5	5	January 18th	10
Kongmuzhuang Southern Association	Northeast	7.5	5	January 18th	10
Kongxiaoying Association	South	9	4	January 23rd	11
Gaojiazhuang Western Association	Northeast	3	5	January 29th	5
Gaojiazhuang Eastern Association	Northeast	3	5	January 30th	5
Fanzhuang Village Dragon-tablet Association	South	2.5	5	February 2nd	26
Gezi Northern Association	Northwest	9	5	February 11th	7
Dongbaishe Association	Southwest	10	5	February 12th	11
Nanguzhuang Eastern Association	North	7.5	5.5	February 15th	20
Anzhuang Eastern Association	East	3	5	February 17th	15

(continued)

Table 6.2 (continued)

Name of Temple Association	Location	Distance from Li Village (km)	Exact amount of donation (yuan)	Temple fair date (lunar calendar)	Number of attendants to the fair
Jiazhuang Association	North	7.5	5	February 19th	21
Nanzhongma Western Association	Northeast	5	2	February 18th	16
Nanzhongma Eastern Association	Northeast	5	2	February 19th	1
Beizhongma Southern Association	Northeast	5	5	February 18th	13
Beizhongma Northern Association	Northeast	5	5	February 19th	16
Xiaoyou Association	Southwest	6	2	February 19th	10
Renzhuang Association	Southeast	7.5	3	February 17th	10
Fengjia Laomu Association	Li Village	0	10	February 19th	4
Gedatou Association	Northwest	3	5	February 20th	17
Yanghu Beimen Association	South	6.5	3	February 20th	5
Xiaosizhuang Association	Southeast	3.5	5	March 7th	12
Dongzhuang Eastern Association	Northwest	1.5	2	March 11th	4
Dongzhuang Western Association	Northwest	1.5	5	March 11th	15
Xiezhuang Southern Association	East	1.5	3	March 14th	5
Xiezhuang Northern Association	East	1.5	5	March 14th	6
Jiashizhuang Association	North	7.5	2	March 17th	10
Nanguzhuang Western Association	North	7.5	4.8	March 20th	16

(continued)

Table 6.2 (continued)

Name of Temple Association	Location	Distance from Li Village (km)	Exact amount of donation (yuan)	Temple fair date (lunar calendar)	Number of attendants to the fair
Xiucaiying Tiefo Temple Association	Southeast	7.5	8	April 10th	15
Gezi Southern Association	West	9	4.5	Beginning of Summer in May (the 7th solar term)	11
Changxin Temple Association	West	4	5	May 29th	5
Linzi Association	West	5	3	May 29th	10
Dadongping Association	Southeast	1.5	4	June 6th	12
Da'an Jade Emperor Association	Southeast	6	5	June 14th	21
Dahaozhuang Association	North	2	5	June 24th	8
Doufuzhuang Association	Northwest	12.5	5	June 29th	12
Beilonghua Western Association	Northwest	6	3.9	July 16th	7
Xiaodongping Association	Southeast	1.5	1	September 9th	2
Yaozhuangjia Eastern Association	Northwest	3	2.5	September 9th	6
Yaozhuangjia Western Association	Northwest	3	2	September 9th	4
Sujiatuan Association	West	8	2	September 6th	5
Beilijiatuan Association	Southwest	8	2	October 13th	15
Tianzhuang Western Association	North	5	3	October 17th	17
Damajuan Association	Northeast	5	5	October 25th	10
Shefotou Association	Northeast	9	3	October 26th	16

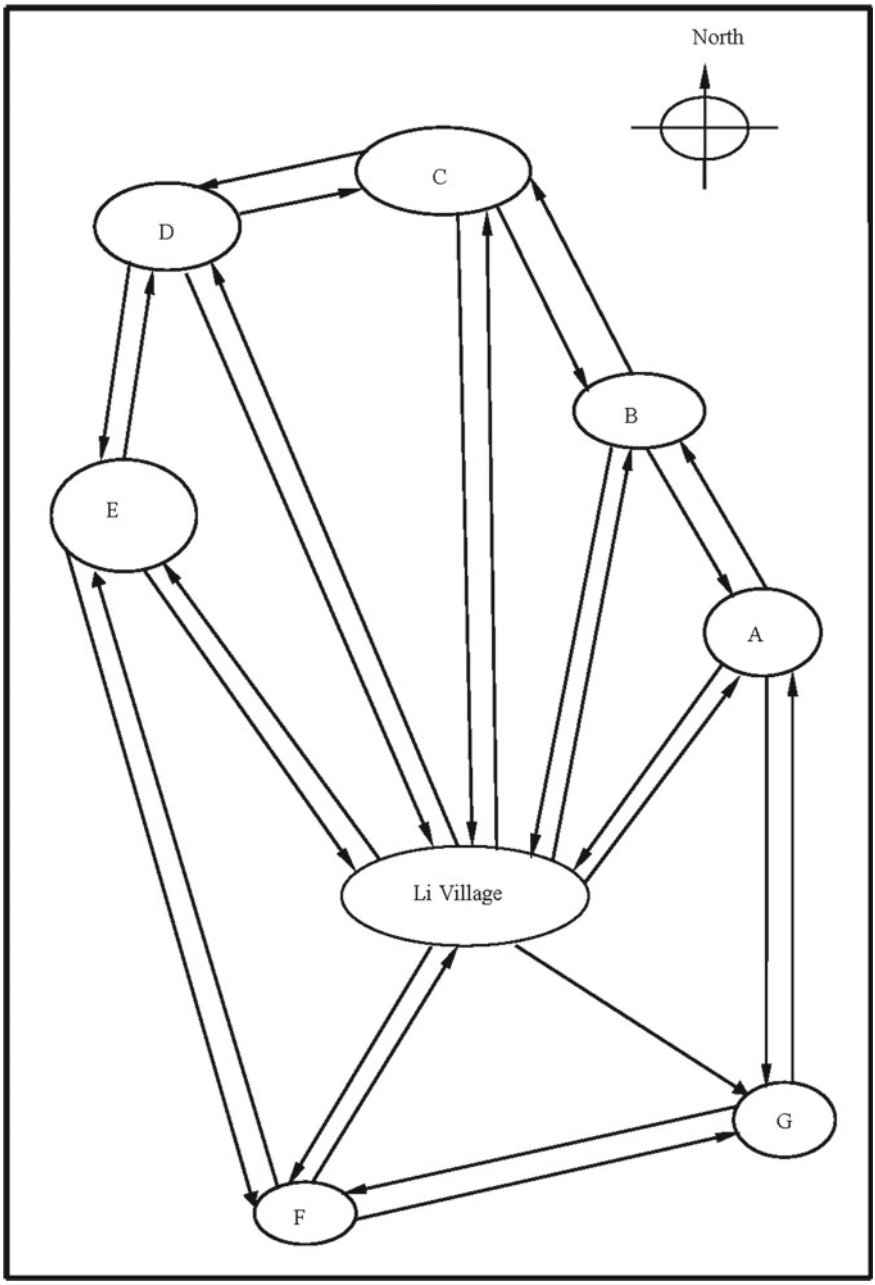

Fig. 6.3 The Nexus of temple associations

Table 6.3 Distribution of temple fair associations who attended Li village temple fair in 1997

Time		Location		Distance	
Season	Number of villages	Orientation	Number of villages	Distance (km)	Number of villages
Spring	34	East	4	<2.5	9
		West	5	3–5	18
Summer	8	South	5	5.5–7.5	14
		North	6	8–10	7
Autumn	5	Southeast	6	10.5–12.5	2
		Northwest	10	13–15	1
Winter	4	Northeast	10		
		Southwest	4		
Total	51		50		51

Villages in this network diagram will send people from their temple association to donate money for Li Village during its temple fair and leave invitations for Li Village to attend theirs. In turn, Li Village will join the temple fair according to the date on invitation and give its donation accordingly. Generally speaking, Li Village will donate the same amount of money received from the village which holds the temple fair, or a bit more, because this rite is to return the donation. Through sending-and-returning, the nearby villages can be connected together. In local words, this way of establishing contact is called "collaboration", which is realized by paying back the same amount of money. It should be noted that the mutual connection produced by such association belongs to a kind of cultural nexus, different from Duara' cultural nexus of power (1988), this is not a place for people to compete for power, but to exchange gifts and reciprocate mutually (Mauss 1990) (Table 6.3).

Donation is not a village's duty, nor is it about economic strength. No matter a village is wealthy or poor, it will raise the money according to the recorded sum in the notes, and namely, it will return what it previously received from the other. There won't be an increase in the amount of money, while the affection among villagers is enhanced and the reciprocal relationship could be firmly established because of this activity.

"Collaboration" among these villages is similar to the ritual of Kula Ring in New Guinea islands mentioned by Mailinowski (1922). The Kula Ring demands two items to be interchanged in opposite direction, so as to maintain the exchange; while the "collaboration" is driven by the duty to donate according to what it has received in certain dates, such as the temple fair (Fig. 6.3).

We can say that the "collaboration" built by donation contains a principle of equality to keep social order. It is not an abstract and mandatory rule, but a ritual that is presented through all sorts of ritual activities.

6.4 Efficacy and Order

People always resort to ordeal when their disputes cannot be explicitly resolved. In Li Village, incense-viewing plays the role of ordeal, because the combustion shape of incense could represent different ways of resolution. From their interpretations towards incense shape, we can know their outlook of universe, so I will firstly recap the related anthropological understanding on ordeal before introducing my fieldwork.

In fact, an important function of religion is to predict the results of controversial events. People often seek gods for help when they think doing things is running a risk, but without knowing what kind of risk is excatly. In the study of tribal societies favored by early anthropologists, people always resolve a controversial matter by ordeal. The British missionary David Livingstone once noted down a local ritual called "Muavi" in his *A Missionary's Travels and Study in South Africa* (1857). It's said when he passed by an African village named Monina one morning, he saw a witch doctor coming to a clearing in the center of village, then arrived many married women. These women were not allowed to eat in that morning and were ordered to drink a plant-soaked water called Goho. For the locals, Goho was very effective in testing the innocence of woman. And this ritual was named Muavi, which was held when a man doubted his wives had exerted sorcery on him. To test the loyalty of all his wives, the man would invite a witch doctor first, then let all of his wives go to the clearing to drink Goho. Each wife must swear that Goho could prove her innocence before drinking. After a while, those vomiting were considered to be innocent, while those had no response were thought to be guilty. Therefore, wives who had vomited would return home, with their family members slaughtering livestock to treat the god that had protected the innocent. In contrast, those found guilty should be burned to death as punishment (Gluckman 1965: 219).

The anthropology of religion initially placed great weight on various forms of witchcraft in primitive tribal societies (Frazer 1922), which related to the belief system in the society. In a sense, the occult beliefs could help a tribal society to centralize power and exert control (Gluckman 1956, 1965). Based on his fieldwork in Azande of Africa, E. E. Evans-Prichard once made an academic division between "mystical belief" and "empirical belief". In his view, the former functions in invisible and uncontrollable activities, while the latter exists in those available to observe and control. Mysterious belief is manifested through rituals and sorcery, most of which would be integrated into economic activities, and then make an impact on all aspects of life. E. E. Evans-Prichard listed many cases in his research of Azanders, which showed that the locals were sharing a thinking logic that was different from the scientific one. Azanders didn't care about the fact that a hunter was knocked down and killed by an elephant during hunting, but questioned why it was this hunter being killed, and why it happened just in this day rather than the other days. For such questions, Azanders usually resort to ordeal with a variety of witchcrafts (Evans-Prichard 1937).

How mystical belief regulates society can be also manifested by people's worship for ancestral spirits, in which the ancestral spirits serve as the agent for social control. The locals attempt to find out the incurring causes of many matters through divine spirits. In their opinion, such spirits would bring bad luck to punish two kinds of wrong doings. The first is the failure to fulfill the responsibility of respecting and worshipping their dead ancestors, such as not making sacrifices for ancestors in time, or forgetting the kindness of the ancestors, consequently, the ancestors would curse their children sick or bring other kinds of misfortune. The second is the failure to shoulder the duty for keeping harmony with their living relatives, which would also be punished by ancestral spirits. Besides, ancestral spirits can seek other ways to manipulate the relation among the living, for instance, all the relatives must get together in the moment of offering sacrifices, and all must behave friendly at the time of sharing sacrifices. If people have a bad mood or complaint when sacrificing, their wishes would lose efficacy, and mishap would occur in their life. On the contrary, if people sacrifice devoutly and frankly, most of his wishes would come true, and the potential disasters will disappear deservedly.

After attributing their mishap to some mysterious reasons, people living in tribes always test the outcome by divination. The aiding tools used for divination are varied, and the most common one is bone, which is rich in diverse and complex symbols in tribal society. A bone can represent many things at the same time, and different bones could embody all kinds of human features. In a word, the diversity in its symbol represents the multiple effects and fuzziness in actual daily events. In fact, divination is a way to give ruling on the issue, according to related experts, rulings like divination and draw are originally associated with games or competitions, through a competitive game, winner could be decided, thus who has the power is certain and undoubted.[15] Such as what the ancient Germanic law agreed, Germans could compete by race or throwing ax to decide who had the possession of a certain land, which is a great example to show that people can "make decisions through game" (Huizinga 1998: 104).

In tribal society, another function of divination is to manifest social conflicts. As time goes on, hatred and discord would be accumulated within a village or a lineage. The troubled relationship clashes with the demand of mysterious belief for social unity, and eventually causes a moral dilemma. Faced with this, people would use witchcraft and sorcery to defuse the tension, as in their belief, the social order could be restored by doing so. And society truly develops according to this cyclical

[15]Dutch linguist Johan Huizinga once did a refined research on people's game features and he pointed out that one of the devices on the shield of Achilles as described in the book of the *Iliad*, represented a legal proceeding with judges sitting within the sacred circle, and at the centre of this there were "two talents of gold" for the person who pronounced the most righteous judgement. It seemed that the two parties were fighting for the two coins, but, actually, they seemed to be rather a stake or a prize than an object of litigation. Johan Huizinga explained that "the poet had a vase-painting in mind which showed two litigants sitting on either side of an actual pair of scales, the veritable 'scales of justice' where judgement was done by weighing according to the primitive custom—in other words by oracle of lot" (Huizinga 1998: 101).

pattern from order to disorder, and then to order. Consequently, Turner considered, once an uncertain event occured, the tribal people would turn to rituals like divination for help (Turner 1957). After some rituals, the process of tracing accountability shall challenge the balance of the tribal power, with the original latent discord turning into an actual turmoil. The state of turmoil and stability would be repeated, which in Turner's words is referred to as a "social drama", namely the conflict between mysterious belief and social reality could be solved in the way of "social drama" (Turner 1982).

Academic studies about Chinese ordeal are mostly from ethnic minority societies and are rich in content (Deng 1991; Zhou 1998), but most people would classify ordeal into sorcery (Zhang 1990), and only give a detailed description of the corresponding rites without considering its real function or symbolic meaning in the community. Sino-anthropology would like to commit itself to making improvements in the latter two aspects, and it has conducted fieldwork about folk religion in Han communities. The existing research shows that god shares the same function of *Yamen* (government office in feudal China), which judges the right and wrong in the village (Wang 1997a: 163). Besides, Zheng Zhenman's study in the construction of the center of power in Jiangkou Community, Putian of Fujian Province reveals that *Dongyueguan* (a Taoist temple), a symbol of power, actually plays the role of local court. Its role is fulfilled by symbolic meanings, such as the plaque "asking your heart firstly" hanging in the middle of the front door, and an eight-meter-wide abacus hanging behind it. As Zheng mentions, this plaque aims to warn people that they must have a clear conscience of their words and deeds, and the big abacus implies the saying "man proposes but God disposes". Moreover, ten statutes of *Shidian Yanluo* (Yamara ja) are placed in the front hall of the temple, asking those coming for disputes resolution to swear in front of each god, and then tell their complaints to the god (Zheng 1997: 178).

In Li Village, the judgment for right and wrong is realized through incense-viewing, which establishes a connection between gods and men. Though it doesn't contain the same obvious symbolic meaning as *Dongyueguan*, its actual meaning is the same. In other words, through seeking help from god with one's all heart, people could get god's will and mediate the disputes successfully with psychics interpreting the god's message to them.

Incense-viewing and Ordeal

We have described the idea of equality and reciprocity which is hidden in the village temple ritual in details. In my opinion, this is a basis for collaboration among temples. Nevertheless, ritual is not only to show the orderly and peaceful scene, but also to unfold the disordered and incompatible state. Similar to the function of court mediation, the village temple shows the collapse of the natural harmony through dramatic rituals, and the elimination of the discord and disorder through rites. Here the judge and the supervisor are gods in village temple, to be precise, it's *Zhangye*.

The scripture-chanters in the village are women, with Zhao Xiuhua being the leader. She arranges folk religious activities, such as chanting for gods at the temple

fair or holding consecration ceremony for the newly-painted *Shen'an* at villagers' homes. Zhao Xiuhua was over 50 years old when I first interviewed her. She came from a 4-km-away village to Li Village after married. Her initial purpose of doing good deeds (*xinghao*) was to recover from her illness of the coronary heart disease (CHD). For local villagers, doing charitable deeds means doing all kinds of good things.[16] More specifically, it means to participate in some religious activities, such as offering incense, chanting scriptures. Zhao Xiuhua hadn't received any formal education and was almost an illiterate. She remembered scriptures by hearing them from others and could stay up whole night to memorize a scripture. With her efforts and loyalty, she finally became the leader of scripture-chanters and got an important position by her strong management ability.

When the chantering group was singing, five or six people would beat drums, and others put palms and chant together. Those having drums were excellent in chanting scriptures, and the two that had Tang-tang drum in hands were the most important. They were like the conductor at the concert, guiding the whole band to perform.

Other than the skillful authority, there existed a "psychic authority". Different from the former that could be improved by hard work, the latter was linked with mystical experiences, especially being possessed by supernatural spirits. Such people were empowered to communicate directly with gods, so they were able to view incense and predict the future, or to convey the divine will by spirit possession.

Xiaowa was one of those who owned "psychic authority", and he could interpret god's will by watching the burning incenses. Precisely speaking, villagers praying for god's will should offer Xiaowa a bundle of incense. Then he lighted the incense and inserted them into the censer. The incense would appear in various styles during its burning, for instance, one piece of incense might fall apart from the bundle, or it might only show black smoke without flame. At this time, prayers would ask Xiaowa for help to interpret the phenomenon and to see if it meant something special. Sometimes, Xiaowa would tell them the god's will directly or help them to find out reasons for the strange combustion.

The incense-viewing rite is usually held in two days: the first day and the fifteenth day of each month. During the temple fair, this ritual will last for more days. Most of incense-viewing prayers are female. Once I met a woman called Xiaohua, who came to the temple in the morning of the first day in November. As the incenses she ignited only smoked without flame, she asked Xiaowa as follows:

[16]"Good deed" had been broadly interpreted by villagers. For example, when I studied the "Spring Dragon Festival" at Fanzhuang Village on March 17th of 1999, I saw banners like "incense-burning and kowtowing can protect you from disasters, consecrating gods is to respect Heaven and Earth" in the place to consecrate Dragon Punch. There were also banners like "learning from Lei Feng, and thinking of and for others instead of yourself" proposed by the government. These were all accepted by locals as "good deeds".

Xiaohua: Xiaowa, what's the matter? Why the incense cannot be ignited?
Xiaowa: I'm afraid your family is facing some difficulties.
Xiaohua: My father-in-law doesn't feel well these days, is it that matter?
Xiaowa: That's right.
Xiaohua: Xiaowa, can you see it again for sure?
(Xiaowa checked the incense again and found that the incense still couldn't be lit but only with black color. He then made following explanation to Xiaohua.)
Xiaowa: As it still cannot be lit, I'm afraid it refers to that matter.
Xiaohua: What can I do? Can you burn paper to see if it has turnaround or not? If it can be changed, I will accompany my father-in-law to redeem the vow

Xiaowa rolled a thin loess-made yellow paper into tubbiness and ignited it. Its ash floated up to the temple beams. Xiaowa and Xiaohua then had the following dialogue,

Xiaowa: The paper has been sent to Zhangye, who agrees to care for you.
Xiaohua: I am relieved. After my father-in-law recovers, I will come again to thank him. Here is two yuan as my donation, and I put it here

Since many prayers come for asking health issues through incense-viewing, Xiaowa usually stands before the censer for a long time. Here he plays as a middleman, conveying the abnormal phenomenon in folk reality to gods, and then transmitting the gods' will to prayers who are kneeling down before the gods' statues. In a symbolic sense, the temple serves as a court, which lets gods make judgment for the unfair events both in and outside the village. And the final judgment will be delivered and interpreted from incense-viewers to villagers. It can handle many kinds of disputes, including domestic troubles and marital conflicts.

Once Xiumei helped a lady named Junyan to interpret her incense combustion, who came for her failure to live with her husband. After being lit, her bundle of incense firstly caught fire well, and then one of these incenses tilted and bent. Xiumei told Junyan: "you see, the incenses burn well. So it seems that you two can get along. Please stop quarreling with each other. As only one tilted out of the whole, it means 'opened', which refers to the opened-heart. Since it has been opened, contradictions will come to an end. Don't toss about your life." Here, the village temple is a mediation mechanism to handle domestic disputes; incense-viewers could reconcile disputes with the power of god. Sometimes, the locals also take god as the judge to give ruling on unfairness.

Let me give another example based on my own observation. At the Fanzhuang Village Dragon-tablet temple fair, two kilometers away from Li Village, I met Yuzhen, a 52-yearsold lady from Wangxizhang Village. Though her village was 20 km from the temple, she walked on foot to join the fair each year on February 2nd. When I asked her, she told me that it was because the dragon-tablet upheld

justice and made efficacious judgments. She once made a wish, if the problem she faced could be resolved fairly, she would worship the god every year and she kept her promise since then. Sitting opposite to her, she told me her story.

> Before talking about my case, I should firstly mention my house. My house includes eight adobe rooms, which was built 16 years ago. Afterwards, a man named Wang Dachun constructed 12 rooms west of my house. Previously there was a narrow aisle in front of our houses, shared by both of us. To my surprise, Wang blocked off the aisle after he finished the construction. At that time, my family didn't allow him to do so and warned him a few times. But he had close relatives with the village secretary, so I could do nothing but to give up. In consequence, my family members had to go in and out in the other side of the aisle. Later, my son married and had a daughter a year later; but the little girl just lived for seven days. In the second year, a little boy was born, but died without reason in his 99th day.
>
> As I just have only one son, if he is sonless, my family would have no descendants. Without a choice, my son had to get divorced on lunar March 10th. After two years, on lunar March 16th, a matchmaker introduced a girl to my son. As both sides got satisfied, they were engaged. On October 16th, they got married, and gave birth to a boy on July 11th of the second year, but that boy only lived for 36 h. One day I met a geomancer and asked him why kids couldn't be kept at my home. After wandering around my house, he said the aisle in front couldn't be blocked. Then we found Wang Dachun to open up the aisle, but he rejected, saying it would ruin the geomancy of his family. My son believed we should open it up as quickly as possible, while I thought it was better wait and see.
>
> Later during the Spring Festival, when I visited my relative, I listened from my aunt that the Fanzhuang Village dragon-tablet was very efficacious, which could make guidance to those unsure things. On February 1st of that year, I went straight to that village temple, and asked god whether the aisle should be opened or not. After seeing incense, the viewer told me that it should be opened because my family had reason. I made a wish at that time: if the aisle got opened, I would offer sacrifice to the dragon every year. Afterwards, I passed on the divine will to my son and asked him to open the aisle. Later my son found a few people to break the corridor. Angry with our deeds, Wang Dachun wanted to give us a hard time. But he failed, because shortly before that time, part of my land was ruined by road-building team, and the Village Committee still owed us grains and money. Even the village leaders didn't dare to find trouble with us.
>
> As a result, opening up the aisle didn't cause any trouble to my family. I thought it must be the dragon that had secretly protected me. After a year a girl was born, who got survived but suffered from rickets when she was 12 months old. Other than this, all went well. Shortly after a year, my daughter-in-law gave birth to a boy, who is two years old now, and is pretty strong. I believe that it must be the reason of god. The god believed that my family had been misjudged on the aisle issue and allowed my family to open it up, and then blessed my family with offsprings. Since that year, I come to the temple fair in Fanzhuang Village every year.

Unsolved or verdict-unsatisfied disputes always exist in the village. And the unsatisfied party often expresses their grievances towards villagers on informal occasions or seeks god's judgment on the issues through rituals. Since they see the temple as the highest court to judge goodness from evil, they would tell god about their discontent in the same way to judge, and hope god bring fair back.

Just as the ordeal that reflects supernatural power through witchcraft in African tribes, in China, fortune-telling, geomancy and incense-viewing are sought to achieve the same purpose. Here, if ordeal has a special magic power, it shall be

shown in its indiscriminate justice towards everyone, at least the locals have such expectation for god.

Another social function of temple and god is about its surveillance on social order. God is said to be clear about everything on earth and knows all its ins and outs of a dispute, so the unresolved disputes can be finally handled by god. In their view, only god wouldn't take sides in disputes, so its will is the fairest. It is obvious that the fairness of god is reflected by its efficacy.

Order and Disorder

It is worth emphasizing that rituals like incense-viewing express villagers' longing for order and their avoidance of disorder. The incense atlas below vividly reveals their cosmic view.

The atlas is kept by Li Erdan, who was in charge of incense-viewing ritual in the past (Table 6.4). It serves as the guidance to view and interpret incense, and the ritual is usually held in individual houses. The incense-viewing led by Li Erdan, which is called *Kansanxiang* is slightly different from the one introduced above, which is named *Kanmingxiang*. The former needs to light three incense sticks, and to be judged by the instructions of the incense atlas; in contrast, the latter needs a bundle of incenses and the judgment would be made by its burning process.

The so-called incense atlas is a chart that records different shapes of burnt incense and their meanings. It involves 24 kinds of interpretation of different shapes of the three incense sticks. For example, the "Peace Incense" with three equal long parallel lined shape after the burning reads as "everything is at peace".

As Japanese scholar Watanabe Yoshio's study in Chinese folk religion showed, Han Chinese universe was made up of *Tian* (the heaven), *Di* (the dead world), and *Ren* (the alive world). In this vertical universe, gods monitored the dead world and the living world, and governed these two worlds by sending out or calling back the underground ghosts to keep the balance between "Order" and "Disorder". In short, if ghosts appeared in human world, the alive would suffer disasters; if gods entered the living world and expelled ghosts to the dead world, the human world would return to orderly and peaceful state (Yoshio 1998: 226–231).

Such cosmic view can also be read in the incense atlas of Li Village, in which words like "heaven and earth", "peace", "happiness" and "luck" have special meanings in locals' mind. For instance, "Donation Incense" means the prayer should worship the gods in heaven and offer sacrifices to them; "Chenglin Incense" asks the prayer to do good deeds.

Based on the above analysis, we can use "in order", "in intermediate state" and "in disorder" as standard to sort out 24 different kinds of incense shape in the atlas. As Table 6.5 shown, 12 kinds of incense shape fall into the category of order, 10 kinds belong to the disorder, and the rest two are part of the intermediate state.

Obviously, the number in the category of "order" is almost equal to that of "disorder". And we may summarize the local meaning of "order", "disorder" and "intermediate state". For them, "order" means humans live in peace and harmony, being healthy and rich, with no incident or bad luck interfering with them. "Disorder" refers to a situation disturbed by external forces, in which human body

Table 6.4 Incense Atlas for Incense-viewing

Name	Meaning	Shape	Name	Meaning	Shape
Peace incense	Everything is at peace		Donation incense	Patriarch will come within three days, offer incense as soon as possible	
Luck incense	Luck will come in ten days		Heaven and earth incense	Heaven and Earth is coming, offer incense as soon as possible	
Disaster avoidance incense	All disasters will go away		Good deed incense	You will be blessed by gods if you do enough good deeds	
Rush Elixir incense	Taoist will form internal elixir, ordinary people will gain wisdom		Eternal happiness incense	Taoist will form golden elixir, ordinary people will encounter happiness	
Big Lotus incense	Fortune will come in seven days		Small Lotus incense	A person will come within three days offering you help	
Big Tianzhen incense	Buddha is coming, offer Buddha incense as soon as possible		Small Tianzhen incense	God is coming, offer incense as soon as possible	
Blessing incense	Luck will come in three days		Long live incense	In three days someone will invite you to meet up	
Chenglin incense	Do good deed and you will be blessed by gods		Fortune incense	You will receive a fortune within ten days	
Funeral incense	Somebody at home will die within seven days		Longevity incense	If the incense leans towards the left, your length of life will be decreased, if the incense leans towards the right, your length of life will be increased	
Salary incense	If the incense leans towards the left, your salary will be decreased, if the incense leans towards the right, your salary will be increased		Death incense	Someone will die within a month or a child will get injured	
Theft incense	Bandit will come in the morning, thieves will come at night		Disease incense	Someone will be ill within seven days	
Bad luck incense	You will be involved in a fight within seven days		Argument incense	You will argue with some bad people within seven days	

Table 6.5 Cosmic view reflected in incense Atlas

World outlook		
Order	Intermediate state	Disorder
Peace incense	Longevity incense	Donation incense
Luck incense	Salary incense	Heaven and Earth incense
Disaster avoidance incense		Big Tianzhen
Rush Elixir incense		Small Tianzhen
Good deed incense		Funeral incense
Eternal happiness incense		Death incense
Big Lotus		Theft incense
Small Lotus		Disease incense
Blessing incense		Bad luck incense
Long live incense		Argument incense
Chenglin incense		
Fortune incense		

and mind are exhausted by sickness, tiredness, contradictions and unexpected incidents that incur misfortunes and torments. While "the intermediate state" is an unstable transition between the other two states, which would transfer to either of them for some reasons.

If we shift our attention to the implicit meaning of the names listed in the table, we would find that those belong to "order" are connected with "getting", and those in "disorder" are about "losing". Besides, those in the "intermediate state" are running certain risks, which represents a probability of "getting" or "losing".

Considering the local understanding of disputes settlement, the so-called justice in disputes-solving actually means both sides believe they "get" something. In contrast, the substantive meaning of the so-called injustice implies both sides feel "lost". And the unresolved dispute means both feel "at risk".

To sum up, the concepts like "order", "disorder" and "intermediate state" not only remain in people's minds, but give them hints through the concrete expression of the stick shapes. The incense atlas believed by locals displays the link between the spatial shape and its symbolic meaning, which is strengthened and reproduced by incense-viewers' hands-on ritual.

The efficacy of ordeal in judging the uncertain risks or unfair treatments will in turn strengthen the god's authority in the regional worship system,[17] for ordeal

[17]About the relationship between the efficacy of Chinese folk temple and its decline, fieldwork carried by Yu Guanghong in Taiwan was the most valuable one. According to his research, temple was the key symbol of a community. Apart from the influence of economy, politics and other factors, its rise and fall must be understood by a "body of mythological". A "body of mythological" could be translated into the folk words as "effective", "epiphanic" or "efficacious". It was also verified in Yu Guanghong's study about changes in temple system in Magong City, Taiwan. Yu divided the magic tales into two kinds, one was "efficacious temple famous by words of

could change a contradiction-filled disorderly state into an orderly one. Or the orderly state would be changed into the intermediate one due to the interference of some incidents, and then be worsened into disordered chaos, which is finally mediated or ended by ordeal, returning to the peaceful and orderly state. The temple rituals reproduce the local people's simple cosmic outlook and clearly show it in the visible reality so that people can see. Furthermore, the rituals show the diverse states of a society. Many forces confront each other, various conflicts entangle, and diverse symbols reproduce in the interior of these rituals, which finally show a sleek, equal and reciprocal unity.

6.5 Authority of Village Temple

In the present power structure of the village, the domination and influence of folk religion[18] cannot be neglected. To explain it, we must pay attention to its revival after the rural reform, namely the revival of folk culture.[19] As stated earlier, in Li Village, the real public-admited time of village temple revival is back to 1989. It coincides with Wang Mingming's finding in Tangdong Village of Fujian Province (1996), and in Hill Street of Taiwan Province (1997b). Wang found that economic development and social modernization did not erase folk culture but brought about their revival. Moreover, Yang Meihui's study went further to show that people actively who were promoting and participating in the tradition renaissance were precisely those newly liberated from the oppression of the "tradition" (1996: 94).

For the revival of folk religion in Taiwan, Wang Mingming attempted to explain it from the functional and psychological aspects, so as to demonstrate the society in the present. The flourish in economy doesn't necessarily mean the decline of folk religion, because economy sometimes promotes people's demand for religion, and religion in turn guarantees the economic life running smoothly. In other words,

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mouth", and another was "widely spread due to special miracles". These two were not mutually exclusive and could exist in the same temple (Yu 1988: 137).

[18]Whether Chinese folk religion can be seen as a real religion is a controversial issue in the academic field (Qin and Kong 1990; Shahar and Weller 1996; Wang 1997a). In order to support or to against the argument, fieldworks are indispensable. However, the study of folk religion is much more difficult than that of national orthodox religions (Li 1948). There are no unitive scriptures or records showing their origins and no unitive religious ceremony. Although they imitate national orthodox religions to some extent and have ceremony activities with agreeable name of orthodox religions (like Buddhism and Taoism), their prominent features lie in their reformation of orthodox religions. Various forms are invented and used in the process. As Ou Danian argued, a clear understanding of Chinese folk religion required a research that could be conducted as precisely as an archaeologist (Ou 1993). In this sense, the point that folk religions belong to witchcrafts, which believed Weber (1995), does not work here. For understanding the issue, I want to describe one village temple celebration, without further discussion about theoretical issues of folk religions.

[19]Wolf named it as "new feudalism" (Wolf 1996).

people can commit their economic risk to religion, and in turn get comfort (Wang 1997b: 45–46). By observing how the concept of money gets popular in folk religion, we can see the Chinese folk religion actually contains the commercialized consciousness which is indispensable in capitalist economy (Wang 1997a: 176).

The above explanation is illuminous for understanding the temple revival in Li Village, because the implementation of the Household Contract Responsibility System has completely changed villagers' lifestyle and turns it from a collective activity to a personal economic one. Needless to say, the newly-emerged lifestyle has more risk than the previous one. Researches on Sociology of risk have pointed out that the life complexity could be reduced through delivering a risk to another trust system (Luhmann 1979; Misztal 1996). In village temples, the magic of god serves as a believable system, by which a kind of "spirit insurance" could be obtained (Wang 1997b: 29). I still remember in the incense-viewing ritual of Fanzhuang Village dragon-tablet temple fair, a rich cardboard-box factory director led all his workers kneel down in front of the dragon tablet, and vowed that if he could earn 500,000 yuan in the following year, he would pay back 200,000 yuan as donation. Therefore, it's logical to analyze the Chinese folk religion from the perspective of economic development.

However, by my fieldwork, besides the explanation that economic development has led the recovery of folk religion, another possible answer is the weakening of state ideological control (Zhao 1997).

Of course, as stated earlier, even in the yeras when ideology was harshly restricted by the state, such as the Cultural Revolution, or the Low Indicator Period in economic crisis, religious activities hadn't been diminished by the strengthing national control, they were kept underground. During that period, they secretly made many comments or predictions on the future of regime, with such voices pursuing the national recognition of the informal power.

After China's rural reform, the state controlled the religious ideology by its institutional separation from religion. Folk religion was either labeled a "cultural tradition" that worth carrying forward, or a "feudal superstition" needed to be eliminated (Feuchtwang 2001: 216). Outside of the state-controlled field, however, there existed another field, in which people could freely talk about non-state issues, such as life and death, rebirth and retribution, life and afterlife, etc. In the countryside, this kind of field was constructed by the recovery of village temples, because only in this field could the above questions be put forward, as well as the power of civil society which could be displayed through the efficacy of god. The restored village temple wasn't only a practical field for religious ceremony, but also an important public place for people to exchange daily experiences, personal understanding of life matters, as well as criticism on present village governance. Similar to the role of village cadres, the village temple could also dominate villagers to assume their obligations for temple activities.

In Li Village, there exist two kinds of authority. One is the Village Committee, being the official agency for state; the other is the village temple, representing the civil authority. These tow authorities often show their strength through competition or cooperation, and there is not much association between temple activities and

those held by village government. Because of this relationship, village cadres said that they had never joined the temple activities because such activities were superstitious. So they only gave some money to hold two or three days' opera performance during the temple fair in the village. It is the only cooperation between the two authorities throughout the year. In the village cadres' view, this action is not in conflict with their role as agent. To the east of the Village Committee there is a big stage, which was built for acting. A slogan of "Enlivening cultural life, developing rural economy" is hung above the stage. Just as the message expressed by these words, the cadres help the temple organization to invite theatrical troupe, with the purpose to promote rural economy through activities like opera-singing. This logic is consistent with the national purpose to develop economy, so it's valid to connect economy promotion with temple activities. But the temple organizers thought that all the people were equal in front of god, including the cadres. Obviously, from their explanation, we know the temple organization hope to communicate with the state power equally.

In addition, there is a very interesting phenomenon, that is, when village officials left or retired from the office, they would take part in temple affairs, attempting to get another kind of power of personal authority. Li Cuntian is an example. He worked as Li Village secretary both in 1973 and 1983. After retired, he had nothing to do, and unfortunately got stomach disease. As he failed to recover, someone told him to seek for god's help. Later he started to worship god and chant scriptures. It really helped him out of the sickness. From then on, he visited Zhangye Temple frequently and worked for it during the temple fair. However, he sayed it was the Budda (*fo*) rather than *Zhangye* that he believed in. According to him, reasons that the villagers worship *Zhangye* are to make sure to have a harvest, while his service for the temple is just to show that he is not against them. Moreover, he would correct some mistakes in religious knowledge at temple fair. He told me the Goddess *Sanhuanggu* that is consecrated in the temple is not *Guanyin Pusa*, etc. Obviously, the former rural political elite may also be religious, but the field he is good at has been shifted from the political field to the religious, which doesn't make any substantial change in the management form of elite domination. As to the religious authority in the village, the previous cadres still try to use the so-called orthodox Buddhism to unify the scattered folk religions, in order to reflect his authority as elite (Weller 1987). In the donation list of the temple fair in 1997, I saw Li Cuntian had contributed 100 yuan. When I asked him about it, he said the reason was his daughter-in-law had given birth to a boy this year, and that amount of money was paid for the realization of his wish. The person responsible for recording donations told me that Li is the one who donated most each year. Here, by joining in the unofficial religious activities, the previous village cadre has gradually regained an authoritative position in informal groups.

The process of temple rituals is similar to the work that local officials do to welcome their superiors for supervision. It is worth noting that the village temple functions as local court, which can fairly handle the unresolved or unjust cases in the court with the help of god. Consequently, this kind of folk authority also demonstrates how the locals see justice. For example, in Zhangye Temple, portraits of the Eight Immortals are hung in the eastern and western walls, with their names

and legends widely known by almost every villager. These gods are seen as heroes, and their legends are strongest instances to rectify the unfairness. Scripture-chanters write some lections to praise the Eight Immortals as omnipotent and cheerful deities.[20] Indeed, besides the religious reasons to popularize these deities in folk society, there actually exists a kind of psychological projection on the folk concept about justice.

Luo Yonglin has proved that the image of the Eight Immortals is consistent with that of ordinary people, and "is a specific reflection of folk consciousness" (1993: 216). The legends of Eight Immortals connote the folk will, and condemn the unfairness by public opinion, especially through ideas and instances of retribution in the daily life. This is evident in the incense-viewing ritual, for the incense-viewers always comfort the help-seekers that "Don't worry, because everything follows the rule of retribution". Once a pig-selling woman had a quarrel with a butcher and was hit by him. Afterwards, she ran into the village temple and asked for incense-viewing. The viewer told her that "*Zhangye* has known this matter and that man will suffer retribution. The butcher won't be able to have offsprings within three generations. You'd better not lower yourself to his level." In this way, a domestic dispute is resolved in village temple by a religious authority figure using a curse-like persuasion.

Here, the main reason to take the symbolic meaning of ritual also as authoritative is that it creates a field where people can have a direct dialogue with the state power. As I experienced in my fieldwork, the locals need this kind of occasion, because this is nearly impossible in the administrative field; and obviously, the ways allowed by the state to have this communication in the formally institutionalized field are too limited. Therefore, outside the formal field, people attempt to set a public space in which they can communicate with the state directly, showing that the civil society is a force that cannot be ignored. Meanwhile, with these spatial constructions, the locals' need to obtain an imagination of politics is fulfilled (Crais 1998).

In other words, what the folk want to express is that, like the state, they also have the ability to mobilize resources in the rural community. In a sense, it is an unconscious "cultural response" towards the infiltration of the state power into countryside (Wang 1997c). Therefore, it constitutes an indispensable part of the rural power structure.

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[20]Zhangye Temple in Li Village treasured scriptures that the locals chanter. Among them there is one named *The Eight Immortals Crossing the Sea.*

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Chapter 7
Transition of Power Structure

We functionalist anthropologists are not really "antihistorical" by principle; it is simply that we do not know how to fit historical materials into our framework of concepts.
Leach (1954: 282)

7.1 History in Memory

In face of disputes, no matter we turn to the official national authority system or the civil one, these systems themselves need a process of development. The description of this process perhaps helps us to get an in-depth understanding of power relations in rural society to facilitate the effective solution of disputes.

Once upon a time, I chatted with a few elderly villagers in the open space in front of the village temple. When it came to the village history over the past few decades, a villager told me what he remembered:

> In our Li Village, what I remember most is the scene when the Japanese came to our village, burning and looting. At that time, I was only six or seven years old. I remember that in one morning when the village people were gathering in the village temple praying for rain, someone ran to tell us that Jiashizhuang Village had been taken by the Japanese. Hearing the news, we knew that the Japanese was coming. Except children and the old, people in the village all ran away. It was the fear that made me remember it clearly. Then a bogus army was set up, stationed in the Xianmen Gate, where the Eighth Route Army was active. Bandits robbed us occasionally. There was a doggerel going like this "violence of

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the bogus army and meetings of the Communist Party".[1] It means that the bogus army came for arresting people or robbing toughly while the Communist Party held meetings in the house of supporters secretly. However, villagers didn't know the identity of Party members. In 1946, a campaign named "reducing rent and interest" was under way. At that time, poor people did farm work for landlords, but landlords could barely benefit from it because of this campaign. In 1947, the village was a liberated area where "Land Reform and Equal Distribution" was carried out. The three years after 1951, I witnessed a movement of "goods purchased and marketed by the state in a unified way". In 1954, the "mutual-aid team" was set up. In 1955, the "small cooperative team" was founded by free union of people and turned into advanced agricultural cooperative team in 1956. In 1957 and 1958, the Great Leap Forward began. What impressed me most clearly was the "four demolition" (sichai) and "five digging-out" (wufan). In fact, it means whatever made of "iron" should be "demolished" for iron manufacture; whatever could be used as manure and increase production should be "dug out" and put into the land. So, at that time the baked earth was dug out and old houses were demolished to pieces to be sent to the ground. The ground should also be dug in depth. The only purpose of doing so was to increase food production. The most funny thing was to give false report, which claimed that the grain yield was over one thousand jin (a unit of weight equals to ½ kilogram) when it was obviously not. Someone even claimed that it was over 10 thousand jin.

I remember that, at that time, a secretary of Fanzhuang Village Commune came to my village to check the grain harvest. Our village cadres prepared a dozen urns (vat) in the grain depot. Firewood and broken cotton batting was put in it and covered with newspapers, above which was the grain. So even it was piled as high as a hill, there actually wasn't much. When the Secretary came and checked, putting his hands on the top and pressing, he discovered the problem because the grain was unsteady when he pressed it. It was said that in the later "anti-rightist" campaign, he was charged of suspecting the achievement of Great Leap Forward and denounced as a rightist because of this behavior.

In 1959, the village engaged in collective canteens, which were later assigned to each team. At that time, there was no iron pan at home and smoking from the chimney was not permitted. From 1960 to 1961, we also experienced a period of "low index and vegetable generation". Now what I remember most clearly is that each person was given "four liang (a

[1]During the War of Resistance against Japanese Aggression, democrat Li Gongpu who once conducted field investigation in North China described the meetings of the Party in Shanxi-Chahar-Hebei anti-Japanese military base. He also considered the form of meeting as a demonstration of the democratic system. This record described the actual operation of the "meeting of Communist Party" in the eyes of peasants in details. As he wrote: "The meeting system is an important part of the leadership in the Shanxi-Chahar-Hebei area. In the county, a county government meeting is held every month while in every two weeks there is a county affairs meeting. The joint meeting of government and citizens is held monthly to discuss the contact and coordination between government agencies and citizens. Due to the need of work, joint meetings of military, government and people can be held any time. The village office, the district government, the county government as well as the commissioner are administrative committees at different levels. There are also regular meetings in administrative committee as well as regular commissioner joint meetings. In commissioner joint meeting, work that has been done or is under progress will be reported while the policy that is going to be issued will be discussed. In the county commissioner joint meeting, commissioners will listen to the work report of each county, check the work, exchange experience and lessons of different counties, deliver the resolution of commissioner meeting to the county magistrate and assign new work. Every county will then formulate specific measures according to its actual situation, which will be fulfilled to each district in the district joint meeting and each district magistrate will discuss it with village leaders according to its own situation…" (Li 1979: 96–97).

> unit of weight equals to 50 grams)" each day. Anybody wanted more food could only eat the so-called vegetable roll made with leaves. It is what we now called the "economic crisis" era. Elm leaves were the best at that time because some other leaves we ate were inedible, which led to an anasarca at last. It is more exaggerated to say that people didn't drop around in the village because they scarcely had breath to speak. As a result, everyone went home to bed early in the evening when it was not dark yet and there was no one on the street. However, nobody had dissatisfaction about the society at that time because we were all starving! This ended in 1961 when collective canteens were disbanded. In 1964, the Four Cleanups Movement (Siqing Yundong) was initiated. Chairman Mao started a Fine Line Campaign (Xixiantiao), which actually meant to oppose cadres eating or taking more than they were entitled to, to oppose extravagance and waste, and to oppose cadres' corruption.
>
> Then came the Cultural Revolution in 1966 with lasted 10 years. Li Village was mainly divided into two factions namely the "Mao Zedong and Lin Biao Guards" and the "Red Guards". But there was no serious turmoil in the village, because many people were surnamed Li so it was easy to mediate conflicts. In 1971 and 1972, Lin Biao engaged in rebellion and Chairman Mao died in 1976. Then came the fall of Gang of Four (Sirenbang) and then Deng Xiaoping was in power. In 1983, the Household Contract Responsibility System took place…[2]

From the history in his memories, we can see a process in which the state power kept penetrating to the rural society while the power structure in this area was constantly transformed.[3] If we comprehend the history in memories from a more macroscopic perspective, we can say that the modern development of rustic regime is consistent with the concept of modern national state within the entire world. British sociologist Bottomore once pointed out that there should be two basic conditions for the initiation of modern nation state. One condition was the appearance of a core government, which decided the boundaries of national sovereignty and territory, while the other more important one was the appearance of nationalism, which specifically meant the pursuit for the political self-determination right of social groups. Because such social groups considered that they were a group living in a certain area with certain ethnic and cultural characteristics and what they wanted to build was a people's sovereignty instead of the royal control in the past (Bottomore 1993: 76).

Comparing with Chinese modern history, we can see that the construction of a modern national state since the late Qing Dynasty is based on the following two premises: one is the overthrow of the imperial regime and the abolition of the

[2]It is selected from the interview with a Li villager on November 17th, 1997.

[3]A recent research of the oral history of Land Reform in Zunhua County of Hebei Province by Fang Huirong suggested that the state power actually penetrated into the village through "research" and "complaint" (Fang 2001: Sects. 7.3 and 7.5). As to the villages I studied, the villagers were more willing to use "investigation" and "confession" to talk about the direct interference and control of their daily life by the state power in the Land Reform and Cultural Revolution. "Investigation" actually means to force villagers to disclose or testify the violations by the so-called "Land Reform" or "Four Cleanups" working group. If any household violated the concepts or policies advocated or published by the state, the family patriarch had to confess the crimes and write down the "confession". This operation mode of the state power in villages will be explained in details in the following text.

imperial domination; the other is the ideological remoulding of the people by using the so-called modern vocabularies such as "progress", "democracy" and "science" to "save the nation" (Duara 1995; Unger 1996). In China's rural society, this change was first reflected in the process of the state power's continual penetration to the rural society (Wang 1997a: 82–102); and another simultaneous change was to build a grassroots state power through constant reform of the so-called "backward", "family ruling" and "ignorant" "traditional" characteristics in rural society which were against "modernity". And it can be said that this state power or authority was truly extended and constructed in rural society in around 1949, which was completely realized due to various so-called "political movements" (Wang 1997: 103). In this regard, in 1948, Hinton's fieldwork (Hinton 1966) in Zhangzhuang Village, Luxian County, Shanxi Province and the Crooks' fieldwork in Shilidian, Wu'an City, Hebei Province around 1948 (Isabel and David Crook 1959) left valuable historical information for our study of history and social structure changes of Chinese rural area during the Land Reform period.[4]

The mainstream ideology of China's politics after the May 4th Movement, regardless of how the governmental and social system had changed, fully recognized the idea of "democracy" from the Western society. In a sense, this was a result of the ideological revolution brought about by the May 4th Movement (Zhou 1996). Such a revolution was implemented in a village community when the state transformed the power structure of rural society, which was realized by continuous identification of relationship between people and that between people and the state. In turn, each definition of the concept of people would bring a transformation to the level of people's ideology. In the dialectical logic of the redefinition and transformation of people, the institutional arrangement of society would also change.

In order to link my field survey data with the background of Chinese state building in a macro sense, I will use some local historical archives as well as my case interviews to present the development of history of Li Village, as a village community, in the following text. In its history, what I want to describe is how customs in this small village community have been constantly rejected and transformed by the construction of the state power system, which is consistent with the ideological changes of the whole country. Thus it can be said that the rejection or the transformation of the customs in rural society is one of the most important ways to build the modern political power at grassroots level.

[4]Hu Zongze's study (1997) further re-analyzed the research of the Crook couple and tried to present another field investigation of Shilidian in order to look into the changes of social structure and power pattern in Chinese rural society in recent decades. The Hinton (1991) had a lot of field impression on the "big resurgence" of private ownership in Chinese rural society after the reform and Opening-up, which was significantly different from the egalitarianism in the Land Reform period. From the comparison of previous and later data, we can see the changes in the social structure in rural China under the guidance of the concept of modernization.

7.2 Interwinement of Power

The memories of villagers mostly start from the period after the Japanese occupation in North China, which is also known as the "North China bogus regime" period with a time span of more than five years, from December 1937 to January 1943 (Zhang 1963). In their memories, it was also the time when the power of Communist Party entered into the village. According to their recall, there were at least three external forces directly affecting the villagers' daily life at that time.[5] One of them was the interference of the Japanese in village's internal affairs after its occupation and they were called "bogus army" by villagers. They lived in the town, coming out during the day and coming back at night. While another force referring to the power of bandits[6] was generally active at night. They came to the village mainly for money and property while their relationship with the power elites in village was in secret. The third force was the impact of the underground Communist Party, who had dug tunnels once in Li Village. They usually dug at night secretly and nobody knew the identity of Communist Party members. At that time, a man named Li Xusheng organized an "anti-Japanese higher primary school" in the Sanguan Temple of the village, which was in fact an anti-Japanese publicity base supported by the Communist Party[7] (Li et al. 1993: 37).

From a reserved document of the village we can tell the relationship among the bandits, the bogus army, and the local elites. This document was written by a village landlord's son to disclose his father, which reflected the impact of various forces on the life of Li villagers in the 1940s:

[5]The study of Chinese peasants' nationalism by Chalmers A. Johnson addressed the coexistence of various forces in Chinese rural area from another point of view. He believed that the War of Resistance against Japanese Aggression fully launched after 1937 in fact had completely changed the custom that peasants were not interested in state affairs. Through the wide spread of vocabularies in rural society like "Chinese traitor", "bogus army", "Japanese bandits" and so on, a kind of recognition of "China" and "Chinese nation" replaced the previous recognition formed under the rule of warlord. In addition to the so-called autonomous defense, villages began to welcome all kinds of foreign forces, including communism, nationalism, secret societies, the KMT anti-Japanese forces and other leaders above the local level. These can be proved evidently from the materials of Li Village (Johnson 1962: 2–6)

[6]From the perspective of regional differences, Joseph Esherick and Lan Jing showed in their studies that since agricultural counties occupied the majority of the North China, there had been few squire with scholarly honor or official rank. In this case, elites in the village could contact directly with the county government, so the state power in North China was extremely powerful while it was bandit in rural area that could confront the state at that time (Esherick and Lan 1998: 159).

[7]It can be proved from the purpose of primary school at that time: "Unite to fight against Japan; advocate patriotism and anti-Japanese policies of the Communist Party; adhere to national integrity, support the Communist Party and the Eighth Route Army without fear of bloodshed to fight with Japanese troops." (Li Shengtian et al. 1993: 37)

> My father had a relationship with bandit Li Xiaozhen and Yan Jilu. This was regarded as a crime in the old society, so their contacts were confidential. He didn't tell the family, because the family would never allow him to do so if they had knew it. After the "the Incident of July 7th, 1937", it was not until Li Xiaozhen had became a member of the bogus army and Yan Jilu had joined the miscellaneous troops that we realized they knew each other and had a relationship. After the autumn of 1938, the cattle was so old that my father bought a red mule. After his purchase, I asked him how much he spent and he said it took 70 yuan. I can only remember that it was brought back by Li Xiaowai. In 1939, after Li Xiaozhen occupied Sizhilan, he robbed the place. In order to protect his property, Li Xinming's uncle in Sujiazhuang begged my father and Li Luoqu to plead for mercy. My father was sick so Li Luoqu and I were sent to do it. Introduced by Li Luoqu, I got to know Li Xiaozhen. At that time, Li Xiaohen just got married with his fourth wife and I congratulated him. He asked me to give him 10 yuan.
>
> In 1941, when the Japanese repaired buildings in my village, they found over 20 sponsors in the village to support the deed. I remember among them were Li Xiaoyun, Li Genshou, Li Yinxin, Li Duobao (dead), Li Luohua (dead), Li Luoda, Li Xiaogeng (dead), Li Yunfa (dead), Feng Xiaohe (dead), Feng Luojin, Li Geda, Li Xiaohu and Li Xiaopang. The village heads were Li Chunxue (dead) and Li Baotai (dead). When the Joint Protection Director was set up in 1942, I was the accountant and later joined Li Yincheng. Then I worked for the Japanese, imposing grain and levies, and became a sinner to the people.
>
> In 1942, the Japanese set up a pseudo big Village Office and appointed me the supervisor, which was in fact an honorary position. I only had one meeting in town. Staffs of the Village Office included Li Duobao, Li Huantang, Li Tonglu as well as Zhang Jingyu, Zhang Jingrui and Zhang Qingyun from Changxinying, Geng Guanying and Geng Tongjing from Xiaoyou, Jia Mingcheng from Changxin Village and Shi Xiaobu from Dong Zhuang.
>
> Once Li Xiaotai was kidnapped, his wife and Li Zhenfa requested me to speak for him.[8] I was unwilling to do that but his wife said: "Uncle, please! I'll kneel down on if you don't go!" I didn't say anything and went to her home with other three people including Li Xiaocheng, Li Luomei and Li Zhenfa. We walked to the southeast corner of the village and found the people who detained him. I gave them 200 yuan or 100 yuan. I cannot remember clearly right now. Then we took him back.[9]

From this reminiscence words, we see that the bandits and the Japanese realized their own interests through well-off families in the village (actually the elite power in village). At the same time, when villagers had a conflict with the outside bandits or the military, they would also find these village power elites to deal with these external forces in order to resolve various conflicts and disputes. In the eyes of villagers, these elites achieved a unique position of authority by having possessed a kind of power resource (Fei 1953; Esherick and Rankin 1990; Duara 1990).

For example, the father mentioned here was a wealthy landowner in the village who had relation with bandits, who could take advantage of such a relationship to get the property back from the bandits and thereby gained authority in the village. We can also see that since the legitimate state power failed to maintain the monopoly domination in rural society, bandits could occupy a certain position in the first-layer power structure of the village (Billingsley 1992). In addition, the

[8]"Speaking for him" is a local expression, meaning helping to get the person back.

[9]It is selected from the "Confessions to the People" by a villager in Li Village.

bogus regime gave them certain power to collect taxes and grains, which in a certain sense was a unique "elite politics" in Chinese rural area in that period (Barkan 1990).

At that time, the villagers spontaneously donated a plaque as a gift to the village leader Li Meixian. The plaque was inscribed with four Chinese characters meaning "justice and peace". When I recently went to the village for the survey, I could still see this plaque hanging on the doorway in his nephew's house, who was also his adopted son.[10] Why would villagers gave a plaque meaning "justice and peace" to the village leader? We can get a glimpse of the reason from the life history of village leaders in the period of the Republic of China. Li Meixian was the village leader for two years from the 25th year of the Republic of China (1936) in Li Village. He was childless, so later he took a child from his wife's sister as the adopted daughter. Then he found a nephew from members of the same clan in the Li family named Li Xiaofei to marry his adopted daughter. According to Li Xiaofei, villagers gave his adopted father this plaque for two reasons. Firstly, when he served as the village leader, he could always solve the disputes to satisfy both sides. When poor families had weddings and funerals, he would go to persuade the wealthy households for a little food or money to help these poor ones make things more decent while he would also help to deal with matters big or small in rich families.

Secondly, he was able to cope with the three external forces in the village. For example, when the bandits came, he would give them some money and send them away; when the Japanese puppet regime came for food and taxes, he was also able to collect them from the peasant households; when the Eighth Route Army came for the publicity of the Communist Party, he would do whatever he could to help. Because of the ability in these aspects, he was appreciated by many people in the village. So villagers collectively gave him a plaque to praise him for the "justice" on village affairs and his contribution to "fighting for villagers' interests".

Thus in the village, the authoritative status of a person was often built by having solved practical problems. This may be a common principle in societies without direct intervention of the state power. In early years, Wang Tonghui and Fei Xiaotong[11] have shown in their study on the Hualanyao Social Organization in Guangxi Province that village disputes were often solved through a so-called "sensible person", who was actually the capable person in the village. He could not only clearly remember how the problems in the village were solved in the past, but also knew the principle of conducts generally accepted by people in the village at that time. What's more, he should be happy to be engaged in someone's disputes at

[10]Here I want to thank Professor Liu Tieliang of Beijing Normal University. In the spring of 1997, when he paid a visit to Li Village with me, he specially led me to this plaque.

[11]The Yaoshan society survey of Wang Tonghui was conducted at the same time with the Yaoshan physical anthropology investigation of Fei Xiaotong. Later, Wang Tonghui died at her post, so Fei Xiaotong organized and edited her social organization survey data, which was later published. Information in this regard can be found in Fei Xiaotong's "afterword" for the book *Hualanyao Social Organization in Guangxi Xiangxian County Dongnan Village* (Wang 1936).

home. When such disputes he involved in gradually increased or when people in the village turned to him in face of disputes, he became the village's "leader". When the village people thought this person was no longer fair in disputes, or when people in the village no longer asked him to mediate disputes, his "leader" status was lost (Wang 1936: 39). A study on a Han village in Inner Mongolia by Liu (1991: 105) also showed that people who presided over ceremonies such as weddings and celebrations in the village tended to be those who were prestigious and in hold of ceremony rules. They were considered to be both enthusiastic and financially capable. But they were not necessarily the older.

In memories of the old in the village, Li Meixian was a very capable person, because he was not only knowledgeable but also experienced. He did business for six or seven years, was an apprentice once, worked as the village cashier at the age of 35, and worked as the village leader for two years. When the Japanese came, he worked as the director of education and then the director of mediation. With such rich experience, he would definitely be respected by most people in the village, so no matter if there was a big deal or a small one, people would turn to him for help. For example, if there were disputes in family separation, when he was there, the disputes would be solved, because they thought what he said was reasonable. Therefore, adults and children all listened to him. This old man lived for more than 80 years. When he was 73, during the Cultural Revolution, he handed in a report about his past to the village government in order to explain his behavior. From the report, we can confirm the impression on Li Meixian in the mind of villagers:

> When I was 17, my family had 11.8 mu of land, five or six daughters, so there were totally seven or eight people in the family. Poor as the family was, we lived a difficult life. So I often worked temporarily for others, such as working for Li Yinlai, cutting wheat for Li Gudong and working for Duan Yancheng in Xihejia Village with Li Yunri from Li Village. I started to sell fruits with baskets on my shoulders when I was 19. When I was 20, there was a flood and I made a living by selling pears, a villager Sanpie worked with me. When I was 21, I transported people or goods with cattle together with two other guys. At 24 years old, I went to transport grain in Gaoyi with the money borrowed from Li Jingtang. In the October of the year of the Republic of China, Li Xiaodong opened a private bank with villagers of Dahao, but he was robbed of 260 yuan when he came back from the market of Fanzhuang Village. It took 300 yuan to open a private bank, so with the 260 yuan robbed he failed to do it. I told Xiaodong that I would find the money for him. I turned to Li Jingtang who told his father Li Laohe and got 300 yuan. After about six years, state notes were put into use, so our bank had to be closed.
>
> Since I was 24, I had been involved in handling many village issues including fights, weddings and funerals. In the August of my 37s, Li Yujin was the leader of our village, who was fond of meddling with bandit affairs. He made mistakes and then ran to Shijiazhuang to open a pear shop and left things in our village unhandled. Old folks thought I could help, so all aged people came to me. I refused at first. But it was difficult to refuse the request of the old so I said yes finally. From August of 1935 to September 9th, 1937, I worked as the leader for around two years. In November, a plainclothes team of more than 500 people came, claiming to be the army of volunteers for Ma Yutang. They lived in eight separate places but the order was very good. I dared not to look down on them, so I provided five or six hundreds jin of steamed buns every day to support them. Four or five days later, I told Ma Yutang that it was difficult for such a small village to keep providing them wheat. He promised me to get food from other villages. He turned to Nanbei Longhua

and Gedatou Village, which hindered the defense sector of Fan Yiran in northern part. Rather than giving Ma Yutang food, Fan Yiran led a troop of the Republic of China to beat him. Then the plainclothes who were occupied the area around Li Xinming's home, had a heated fight in the north street with the army of the Republic of China who encircled the village. Later, the adviser Qian wrote on a flag that "since we are all Chinese, stop the fight." There were four or five names on the flag, among which I could remember Li Tongxi, Li Youmei and Li Huiyin. They came out for mediation and reached reconciliation. The army of the Republic of China retreated to Dongzhuang Village, while I sent Ma Yutang to the grave of the royal family south of the village, and then he retreated to Zhujiazhuang Village. At that time, the Japanese occupied the Zhaozhou City. When the four doors were closed, people could neither go into or out of the city. Bandits were rampant to rob property and money. The village was also in a mess, where everyone was gambling without the rule of law. The civil corps in the north were well organized, so the 52 villages in the east discussed to set up the civil corp. Three days after Ma Yutang left, leaders of the 52 villages were gathered at the police station in Xianmenlou. I was still the leader so I went there and there were more than 40 village leaders. Later, when they wanted to choose me as the leader for Fanzhuang Village and Changxinying, I refused. I said to them that my mother was about 80 years old of whom no one else could take care so I couldn't do that. When we were discussing, Ma Yutang heard the news about the civile corp and got angry. He fought with Fan Yiran and had no clear idea of the situation in the eastern and northern area. As a result, with the misunderstanding, he took more than 30 village leaders to Zhujiazhuang Village. In pursuing help, people finally turned to Li Dingxi in Gaoge Village. He told Ma Yutang that the situation in the eastern area was different from that of the northern area because its civil corp hadn't been set up. Therefore, the village leaders were set free but the civil corp had never been existed for one day.

Up to my 44s, the Eighth Route Army became active. They took my south house as their office, leaving a lot of documents there. When the bogus army came, they burned the house, so food and furniture were gone. The District Mayor Xing offered me 80 jin of grain. I was setting up schools in the village. After the incident I dared not to stay at home and often lived in Li Jiatong's home. Later I went home to see my parents. One day I went to the west of Fanzhuang Village and met Hao Gujian of Da'an Village. I asked him: "What are you going to do?" He answered: "I opened a flower shop in Da'an, and now in Xianmenlong." He then advised me to help him in the flower shop and said that I was good at business. I said I was an outsider for flower business. He said: "You can do that. Come on!" He fixed a date and I went to work there. Gujian told me not to bother when he was there. When he was not, I had to take care of the money, so people called me "Manager Li". Hao Gujian was actually working for the Eighth Route Army and was using the flower shop as his cover. A solider of the Eighth Route Army called him "Unit Chief Pan" and a man named Zhao had taken flowers from the shop. All including the flower prices were handled by Hao Gujian, while I only worked on cats and dogs. When I turned 45, I left the flower shop. I worked there for less than a year and then returned home for farming.[12]

The life description above helps us to get a glimpse of the power structure of rural society in North China from the 1930s to the mid 1940s. As previously stated, at that time, a village was affected at least by three social forces: the bogus government set by the Japanese, bandits and armed underground Communist Party.[13]

[12]It is selected from the information provided by Li Meixian for getting rid of the title as "evildoer".

[13]When I tried to figure out who was the person "Ma Yutang" mentioned in the text from the villagers, they replied that he was actually a bandit. And I found in the *Zhaoxian County*

In such power structure, the closure of local autonomous administrative system and its self-ruling was in fact collapsed,[14] which means the villagers couldn't directly manipulate the official village issues. Village leaders called "Village Mayor" could not make decisions independently as well.

For local people, a good village leader can solve practical problems for villagers so as to gain their trust to secure his position of authority in the village; he should also handle these three forces well so as to obtain a stable order in the village and play a role in protecting people. A harmonious relation with the outside world would enable him to gain the authority of resolving disputes in the village. Such kind of people has a reputation in the village not necessarily because of wealth but their own intelligence.

At that time, the village power system is far from a conscious construction. If there was any, it was only to cope with errands. Thus, the village leader was not a position everyone wanted. In many times, due to the deficiency of the state legal system at the village level and even at the town level, when there emerged a civil dispute, a third party with authority was needed to mediate in order to maintain peace and order of the village. The elders would help to persuade a person universally accepted to be the village leader, who was capable of resolving internal and external affairs of the village. In this case, since it was not easy to refuse the elders and he actually had the ability, so the person usually accepted the post reluctantly in the end. Li Meixian is a good example. Although there were a few police to help the village leader, maintaining order in collecting food and tax, or coping with bandit harassment. Except for these, they didn't have any contact with the outside world. Although, during the Japanese's occupation, there were some villages associated autonomous organizations, they didn't last long. As a result, a village was relatively isolated and closed in that era. But after the mid 1940s, the isolation of this little place was gradually broken.

Chorography that the so-called "undercover teams" were all armed bandits. "Fan Yiran" mentioned above was also a strong local bandit, a former head of the police organization of KMT before 1937, who led some 30 people stationed in Anjia Village. After the "July 7th Incident of 1937", he once organized the "innocent civilian armed self-defense regiment" and later he was executed by the 385 Team of the Eighth Route Army in the spring of 1939 (Hebei Province Chorography Compilation Committee 1993: 373–374).

[14]After the establishment of Republic of China, the neighborhood administrative system of local autonomy was adopted in various regions of Hebei Province. Qucheng Village of Dingxian County had the strictest organization settings and administration, which was "just like a small state society" (Wen 1936: 378). The village set up a "village autonomy club", under which there were many other functional organizations including "public security coordination association", "interest coordination association", "education coordination association" and "public benefit coordination association".

7.3 Land to the Tiller

In China, the relationship between people and objects is often a relationship of domination and power. Because of the occupation of a lot of lands, landowners had the power of controlling others' labor through the lease of land in the village (Chen 1936; Freedman 1966). At the same time, they also had the power of culture domination to establish orders and construct norms of village affairs (Brook 1990; Rowe 1990). Meanwhile, it is very interesting to see that landlord's dominant position in rural area was not hereditary. The management of family property by these elites who occupied the land would influence their social status, which means wealthy landowners could become ordinary peasants while peasants could also be landowners. It has been proven by the study on changes in the economic and social status of rural business landlords (Jing and Luo 1959; Kazumi 1994).

Free trading system of land in China has been gradually implemented since the late Qing Dynasty (Zheng and Yue 1987; Li 1993). Under the patriarchal system, land could not be freely traded. Its trading was strictly controlled within a family, which means anyone in financial difficulties was only able to sell their land to their kindred people at first rather than other people (Fu 1992: 2). This customary law of the land system was "expressly prohibited" by Beiyang Government (Zhang 1957: 75–77).

The real reform of this relationship between land and property possession should be traced back to the China's rural land reform in the middle of the 20th century. Before that, although Sun Yat-sen proposed the equalization of land ownership, and the proposition of "land to the tiller" was to implement by legislation (Feng 1934), it didn't bear any fruit in the end. The land reform which had realized the "land to the tiller" was the so-called Land Reform Movement led by the Communist Party in the 1940s (Dong 1987). The Land Reform carried out by the Communist Party made use of the criticism of the land system at that time. A group of statistics showed that landlords and rich peasants accounting for less than 10% of the total rural population were in possession of 70 or 80% of land so that they lived without producing; on the contrary, poor peasants accounting for more than 90% of the total rural population only occupied 20 to 30% of the land, leading them to work throughout the year without adequate food and clothing (Liu 1985: 32). In such a situation, the following land reform proposition to liberate peasants had been clearly put forward:

> The abolition of the landlords' feudal and exploitative land ownership and the implementation of peasant land ownership can liberate the productive forces in rural areas, develop agricultural production and pave a new road for China's industrialization. This is the basic reason and the fundamental purpose that we want to implement the land reform (Liu 1985: 33).

Interfered by the state power, the relationship between man and the land was redefined, and thus a new standard for social order construction had been proposed, which meanwhile brought a new and gradually formed power dominance relation in rural area. It exactly verified anthropologists' general understanding of social

changes, i.e. changes in social structure were actually those in power structure, a power domination "swinging" to the other one (Leach 1954).

Fundamentally speaking, the land reform movement in rural area of North China in the late 1940s was a political campaign by which the state of the Communist Party of China really had a direct impact on the social life in rural area. Practical experience gathered from the transformation of the intrinsic possession relationship of land in the Land Reform Movement in rural area of North China in turn affected the land system reform and the power system reform in rural area of South China (She 1997: 53). This political movement had brought fundamental changes to the intrinsic relationship of property rights, which had thoroughly changed the rural power pattern and property relationship (Hinton 1966; Crook 1959, 1966).

In the memory of villagers, the land reform in Li Village started from a social movement for peasants namely "reducing rent and interest" in 1944 led by the Communist Party. In 1944, though the "reducing rent and interest" did relieve the burden on peasants, the relationship of land possession hadn't been fundamentally changed. Therefore, on May 4th, 1946, the CPC Central Committee promulgated *Instructions on Liquidation of Rent Reduction and Land Issues*, referred to as the "May 4th Instructions". This is a revolution to redefine the land ownership through mass political movement.

From *The History of Li Village*, we can see that peasants resorted to the so-called "stormy" approach like "complaint" or "revenge" to transfer the property rights from large landowners and reactionary rich peasants to peasants. For medium and small landlords and rich peasants, an ideological persuasion approach was used to achieve the rights of land property transfer (Li et al. 1993: 57).

This land property rights transfer in Li Village was completed successfully on September 13th, 1947 when the National Land Conference of the Communist Party of China passed the *China's Land Law Outline*. After its promulgation, Li Village redistributed the land equally based on the *China's Land Law Outline* in the same winter after a thorough inspection. This "equal distribution" required an absolute land equality among villagers, which was realized through the following consecutive "abolishments" in the *China's Land Law Outline*:

> Article I. Abolish the feudal and semi-feudal exploitative land system and implement land to the tiller system.
>
> Article II. Abolish any land ownership of the landlord.
>
> Article III. Abolish any land ownership of the ancestral hall, temple, monastery, school, authority and organization.
>
> Article IV. Abolish any debt in the village before the land system reform.
>
> Article V. The Rural Peasant Committee and its elected commission…are the legitimate authorities of the land system reform.
>
> Article VI. …any land owned by the landlord and public land is taken over by the Rural Peasant Committee. Together with other land, they will be distributed equally to all villagers according to the total population without distinction of sex and age. Land will be equally distributed to all villagers concerning both quantity and quality and owned by individual.

> Article VIII. The Rural Peasant Committee takes over any livestock, farm tools, house, food and other property owned by the landlord. The spare parts of the above-mentioned property will be taken over and distributed to peasants and poor men who lack these as well as landlords…
>
> Article XIII. In order to implement the land reform, any criminal who disobeys or violates this Law will be judged and punished by the people's court. The people's court is selected by the Rural Peasant Committee or Peasant Representative Congress and organized by the people appointed by the Government (Liberation Community 1948: 12–15).

From the several decrees I chose concerning the land and property redistribution, we can see that it was the objective of the Land Reform that had given everyone the right to own a piece of land. This kind of property right was obtained through mutual compensation. The basic moral mode of thinking at that time was that anyone who owned more property than others was guilty, and the only way of exemption was to give the excessive property to the villager who lacked. A person later entitled to landlord relentlessly criticized himself for possessing too much property:

> Before the equal distribution, my family had much land but few people. I thought that people would only take the good land, so I took the east door and the west door. After the equal distribution, someone wasn't satisfied, so I gave back the both doors. At the same time, I also handed in the wooden bar above the toilet. But now I feel sorry to people and our superiors, I should plead guilty. I must work hard in the future and comply with public law.[15]

At that time, the landlord would secretly hide some property, trying to preserve their property. But these things were eventually found out and equally distributed among villagers after several reviews and clean-up. A peasant who was a former landlord recalled that:

> During the land review, I found a place in Xiaohua's home in our village. I asked her whether I could hide something at her home. At that time, she only had young children at home, so she agreed. I remember I hid two suitcases at her house, inside which were twelve or thirteen packages. There were also over 40 jin of lint and three or four pieces of homespun. But before long, the village discovered that and took them all.
>
> In my south room stood two sitting cabinets with quilt covers and a few garments inside. There were four beds, which were all taken when they left. The leader was named Luo Hong. In addition, there were five dou of millet in four bags in my east room. The east room was a granary at that time, which stored red grain. The millet was buried beside the red grain. The village also took them all after they knew it.[16]

The core task of the Land Reform was to realize the goal "land to the tiller" (Wang 1983). Of course, it is undeniable that any reform with economic goal will have a more profound political significance. Whoever was able to get some from the land and property, even only a little bit, was considered honorable. Through the division of land property rights, the symbolic meaning of social rank had also been

[15]It is selected from the document provided by a villager during the Cultural Revolution.

[16]It is selected from the document provided by a villager during the Cultural Revolution.

changed. For example, middle peasants had a weaker demand for land and property compared to poor peasants, but they still strongly hoped that they could get land or other property. This would make them feel proud, like "one of" the poor peasants. While the soldiers' dependants, cadres and members of a revolutionary martyr's family who originally were rich peasants also wanted a share of the property. Although this share had nothing to improve their life, it showed their "glorious" side, so that the pursuit of such a symbolic significance of the land enabled more than half of the total households to get land and property (favored side). Take statistics of northern China such as Shanxi, Hebei, Shandong, Henan and Taihang area for examples, the favored side was over 75%[17] (Dong 1987: 371).

The revolution to equally distribute land and property was completed soon through the abolition of property rights of landlords and rich peasants so that poor peasants had finally stood up. At the time, "emancipation" became the most popular and new vocabulary among folks.[18] American writer Hinton (1966) also chose this word of political meaning as the topic of his book on the perception of Land Reform. As a witness of the Land Reform in North China, he explained the meaning of "emancipation" as follows:

[17]The favorable sides of all counties in Shanxi-Hebei-Shandong-Henan area and Taihang area listed by Dong Zhikai included: Lingchuan, 75%; Xiyang (13 villages), 78.1%; Changzhi, 81.55%; Neiqiu, 85%; Lucheng, 81.72% (Dong 1987: 371).

[18]A Chinese People's Liberation Army cadre who had participated in the Land Reform in North China collected popular ballads in that area at that time. A ballad called the "Lunar July Seventh" is the most representative one which can reveal the real meaning of the prevailing discourse "turning the past upside down", so it is hereby to attach the full text:

On July 7th, when we wash the greasy	The water is clean and clear.
A group of wives and daughters,	talk and laugh, happily.
We don't wash the broken oil bottles,	but the fine porcelains.
Porcelain plate, porcelain bowl and porcelain vase,	are what we got from the landlord.
Red flowers and green leaves with gilt lace,	eight plates and bowls can fill a table.
A couple of vases are placed at the door,	"blessing and wealth" is written on them.
We resembled the broken bottles in the past,	dark, dirty and muddy.
Landlords resembled porcelain,	with "chicken, duck meat and fish" in their belly.
Now we take turns,	when we become the master of the state.
We stand straight,	while the landlord lower their heads.
We live in good house,	and till good land.
Poor people turn their past upside down,	with new cloths to replace the ragged coat.
On July 7th, when we wash the greasy,	the water is clean and clear.
The plates are washed clean,	to reflect people's smile.
When holding the porcelain bowl,	we think about the grain producer.
Poor people turn their past upside down,	thanks to Chairman Mao (Gao 1956: 32–34).

> Every revolution creates new words. The Chinese Revolution created a whole new vocabulary. A most important word in this vocabulary was "fanhen". Literally, it means "to turn the body", or "to turn over". To China's hundreds of millions of landless and land-poor peasants it meant to stand up, to throw off the landlord yoke, to gain land, stock, implements, and houses. But it meant much more than this. It meant to throw off superstition and study science, to abolish "word blindness" and learn to read, to cease considering women as chattels and establish equality between the sexes, to do away with appointed village magistrates and replace them with elected councils. It meant to enter a new world (Hinton 1966: VII).

It should be said that the core content of such a "new world" is the appearance of a new power pattern under the new land relationship. From the prevailing concept of state ideology, a new power pattern should be the kind of power regime in which the power should be firmly held by the emancipated peasants. Only in this way, the "emancipated" liberation that the peasants obtained would not be "turned" over. It was the consensus within the Communist Party at the time because the logic was simple: regime is the premise of everything. Dong Biwu, the President of the People's Government of North China, concisely wrote that:

> In feudal times, can you touch the private property of landlords? No. He is in power, so he can force you to hand over a certain land tax. After the people have stood up in revolution, they are in power, so they can order landlords to hand out, which landlords should obey. Why? It is because we have the power and the army. What can you do if there is no government support in the land reform? (Dong 1986: 35)

The construction of regime can be achieved by redistributing the property of landlords and rich peasants equally, so as to reach mutual equality. The other way to achieve this goal is to gradually change the ideology of the insiders of political power. In Li Village, the equal distribution of land and the so-called "party reorganized movement" almost happened simultaneously, whose core purpose was to eliminate the sympathy to the landlords, rich peasants and petty bourgeois from the members in charge of the grassroots leadership of the Communist Party. Among the vocabularies invented by the locals, "face washing" or "dust cleaning" were two well known words, meaning that through the transformation of ideology, the "dirty" thoughts of landlords, rich peasants and bourgeoisie to oppress peasants would be wiped off or washed away. The "Poor Group" was composed by poor peasants. It was announced by the authority of higher level that all people in the village should be fully compliant with the resolution made by the "Poor Group". The village cadres would be checked one by one to see whether they favored the landlords and rich peasants in the Land Reform. People who went against the Land Reform would be dismissed, which was called "stone removing", meaning that they would be removed like "stones" and handed over to the general public for criticism. Five "stones" like that in the village were removed at that time, which in fact meant to remove a group of cadres and replace another qualified group after review. Such ideological transformation actually occurred to everyone. The direct purpose of this transformation was to reinforce grassroots political power in the hands of "proletariat". The Chinese proletarian as the representative of state power hadn't stopped the ideological transformation aiming to those who exploited others relying on their

property rights until the end of the Cultural Revolution. Because these people were given another political "titles" in the early stages of Cultural Revolution, and each one was labeled his sins, which made them "introspect himself three times a day". The ultimate goal of this kind of political surveillance was to eliminate the "self-interest" thought and make everyone only think about the country and the collective. I once transcribed the application of Li Mengshun for casting off the title "landlords and evildoers" in Li Village written in the late Cultural Revolution, specifically on March 22nd, 1973. The application went like this:

> In the past, my thoughts to exploit others hadn't been properly transformed, because I was not well educated. I had low awareness and backward thinking, so I had committed a big sin. After years of generous and enthusiastic help by the Party and Chairman Mao, the Party Branch often guided me in learning Chairman Mao's writings and the Party's policies. They used every effort to save me, lead me back to the people, make me reborn and repentant, let me join hands with the majority of the toiling masses and work hard and strive for the early realization of socialism. I take it as the greatest happiness of my life and I'm grateful to the Party, to Chairman Mao, to the poor and lower-middle peasants as well as the masses. Although I'm a criminal, leaders have given me tolerance, warmth and help. So, in my daily life, I often miss the poor and lower-middle peasants. I'm always looking forward to learning from them, to love the group, to accept education by them to transform my bad thoughts with the goal of taking off my title as the landlord and evildoer as soon as possible. I hereby make an application and look forward to the approval from the leadership:
>
> I have some achievements in the transformation:
>
> (1) In 1970, when there was a heavy rain, water was everywhere, it even soaked the yards of the community members, I took the initiative to call Li Wenbin, Yue Chunfang, Wang Xiaowu to discharge the water to the ground in the west of the village.
> (2) In the summer of 1971, the wheat was put on the roof for basking. Then one night it rained, so I worked with Zhongqiu and Shuangshan to put away the wheat and cover them well, so that the collective property didn't suffer from loss.
> (3) In the land irrigation in 1970, after I handed over to the next shift in the evening, I saw the second drainage on my way home had a hole. Fan Mingzhu and I immediately blocked the hole before going home for dinner.
> (4) After the earthquake, there was no reward to work on the kiln, so others were afraid of hardships and changed shifts every few days. I held on until the end and changed shifts after the kiln resumed awards.
> (5) I always listened to the leadership, followed arrangement, and did whatever was required honestly but not for money, strengthened unity and accepted everyone's advice sincerely.

In the village someone who was a teacher after liberation felt guilty for once being a descendant of landlords in political movements after the Land Reform, so he wrote such a confession:

> I grew up in a landlord family and I am 50 years old. My family hired day laborers and long-term employees to work for us in the past, while I enjoyed my parasitic life by exploiting working people, depriving poor peasants of ample food and clothing after therir whole year of hard work. I studied at school until the "incident" happened with the money I got from the exploitation. After the July 7th Incident of 1937, I stopped attending school, participated in agricultural production and later worked as a teacher for several years, and later was sent to the agricultural front.

> During the occupation by the Japanese, Zhang Xiaodui worked at my home. His leg was injured by the bogus army. Though he later recovered, he was crippled and not able to work, so I drove him off, which made me regret mingled with self-reproach.
>
> Under the influence of outdated ideas and the rise of capitalist ideology, I reserved good fertilizers at my field instead of at the collective field. In 1962, I exploited two pieces of wasteland, which affected the collective farmland due to personal interests and made me lose five yuan for damage. I also pulled down the wood on the large doorway. Although it was owned by the team, I did this for individual interests. When the government called for investment in 1958, I didn't take the initiative to take part in the movement. Later, with everyone's help, I completed the task in accordance with the team's plan.
>
> Through unceasing learning, I have constantly improved myself ideologically. I then recognized my sins. I felt really sorry to the poor and lower-middle peasants and for not living up to the generousness of the government and the people. So I have made up my mind to thoroughly rectify my errors and turned over a new leaf. I must make a clean break with the bourgeois ideology, comply with policies and laws, transform myself through working hard, abide by labor discipline, actively participate in productive labor and compulsory labor, continuously study, fight against selfishness and revisionism, get rid of the characteristics of "selfishness", think of the collective all the time, do nothing harmful to the collective and say nothing harmful to the collective.

From the quoted paragraphs above, we can see that in the ideological movement along with the Land Reform, a set of ideology and concepts of state was imposed on the individual's way of thinking, turning into to the "superego" in Freud's personality theory (1986) to monitor people's impulses due to desires (Zhao 1992). In Li Village I studied, the vocabularies they used to talk about ideology were the same, such as "learn little", "low awareness", "backward thinking", "evil", "save", "thoroughly rectify one's errors", "thankful", "love the collective", "do whatever is required", "fight against selfishness and revisionism", keeping appearing in the text above. These vocabularies had constructed a compulsory relationship between the people and the state out of "obligation". At that time, there was a simple logical thinking: each individual was a member of the state so all their goals could be achieved only under the shade of the state. Here people were transformed into individual subjects submitting to a single principle and always expressing their loyalty to the state (Yang 1994). Such logic was explicitly displayed in the difficult times of the country.

7.4 Crisis in Economy

In the memory of people in Li Village, it is most memorable for them to go through the three years of economic crisis around 1960. They would talk about the poor and hungry life enthusiastically with sadness. I once had a conversation with a villager who had experienced the crisis:

Author: Do you know why you were starving at that time?
Villager: Of course. Because our country had to pay back foreign debts, for not allowing foreigners to look down upon us.

Author: So you didn't have any complaint?
Villager: Everyone is equal so why should we complain!
Author: Was there anyone obtaining more food or property?
Villager: Sure, but there were only few. Once discovered they would be criticized and punished or even serve a sentence.
Author: Were cadres starving?
Villager: No, but they wouldn't have too much food. It they were hungry, the tasks assigned by the higher authority couldn't be completed.

At that time, Li Village was divided into eight normal units, one forest farm unit, one pig farm unit and one sideline production unit. The institutional framework of each unit was composed of cadres as production team leader, political leader, women leader, recorder and cooking leader. And other small units had a political leader and a technician. Each team had to build their own canteen,[19] where the village people regardless of gender and age had to eat together rather than cook at their own house or had their own iron pan. At dinner time, every household would send a person to the canteen to get some food and then eat together. Of course, some of them might also get their own food, regardless of other family members. According to the standard at that time, each person got 4 *liang* (a unit of weight equally to 50 grams) of food per day while the rest could be substituted by vegetables, leaves, carrots, yams and so on, which was called the "low standard and vegetable as substitution". It means that the state would only guarantee a "low standard" of four *liang* of food a day (commonly known as the "entire four *liang*") while the villagers should solve their own problem if they wanted more. At that time, the core mission of the village government was to feed peasants better with limited food. In a work diary of the village secretary[20] collected by me, it can be seen that what they had to deal with every day at that time was mainly "food" issues.[21]

[19]Another purpose of the establishment of canteen was said to be the liberation of women and improvement of women's status. According to the materials provided by Ling Zhijun, all the newspapers claimed that the reason for village built public canteens was to free women from the burden of housework. Even *People's Daily* also said that Henan Province had built 320 thousand public canteens and thus liberated 6 million women (Ling 1996: 71).

[20]In tough times, Yue Sanhu was the secretary of Li Village. He couldn't read, but he had to record something. So he found a literate person to record the daily work, which left valuable information for people to understand village affairs at that time. I got this little diary from the current branch secretary. In order to facilitate the quote, I'd like to call it *Working Diary of Yue Sanhu*. I'd like to express my thanks to Secretary Li Jingmin for his understanding and support for the academics.

[21]Fei Xiaotong discovered the food deficiency problem in 1957 when revisiting Jiang Village. Jiang Village produced 259,000 jin of rice in 1936 and its number reached 418,000 jin in 1956. Although there was an increase of 61%, it was actually not enough. According to Fei Xiaotong, in addition to the "big population and short of land" at that time, the main reason lay in the political tendency toward boasting and exaggeration (Fei 1986: 223), which can be seen from the memory of exaggerating food production in Great Leap Forward era among Li villagers.

Food issues were closely related to the construction of village canteen. The standards of village cadres to evaluate the canteen were recorded in a diary of 1960, which were divided into three classes. Class I was the best canteen; Class II was the medium canteen; Class III was the poor canteen. As was recorded in his diary:

> Requirements for Class I: The canteen backbone leadership is strong. The system is completed. Grain is often mixed with vegetables; there are staple food and broth which can make people full and feed them well to their satisfaction. With collective conditions, the canteen could realize mechanization or semi-mechanization. Requirements for Class II: The canteen backbone leadership is basically strong. The system is not completed. Grain is not often mixed with vegetables, which cannot make people completely full nor feed them well and the cooking utensils are outdated. The canteen often stops cooking, which causes a few criticism; Requirements for Class III: The canteen backbone leadership is not strong or not strong enough. Somebody eat too much. There is cooking smoke both in canteen and house. Members have to eat dry food and drink water and they are not satisfied with it.[22]

Cadres considered management was the first priority to build a good canteen, especially the screening of the cooking staff. Landlords and rich peasants should absolutely not be allowed in the canteen. The preliminary statistics of the village canteen can prove this (Table 7.1).

From Table 7.1,[23] we can see that canteen managers were required to be at least the middle peasants. It is recalled by the village people that some rich peasants good at cooking were occasionally sent to the canteen for help, but once there was food lost or became moldy without a clear reason, these "backward" people "sneaking" into the canteen were often to blame. Thus, a criticizing meeting would be held to drive them away. There were also non-management staffs who stole food from the canteen. One of the important tasks of the cadres at that time was to catch this kind of thieves, who were usually aged women or children at the age of seven or eight. After that, the village cadres would criticize and educate these "thieves" and punish them occasionally. But the cadres would discuss the punishment together.

The village cadres should personally intervene in the food for villagers. Periodically, each village sent cadres to exchange cooking experience, where cadres of each village competed to produce "the most" and "the best" dishes with the least amount of materials. At that time, there was a phrase named cooking "contest", aiming to see who "eat soundly, eat well, eat fine and eat right".[24] Thus, at the time, the management cadres would always come back with new copies of recipe to save food. Those were the best delicacy at that time. We can check the following content for the materials and the specific practices of those dishes:

(I) Light Soup with Balls Mixed by Yam and Vegetables

1. Ingredients: (per capita) (1) maize meal 2 qian (a unit of weight equal to 5 grams); (2) flour made of various kinds of beans 2.87 qian; (3) fresh yam 7.5 liang;

[22] *Working Diary of Yue Sanhu*, October 11th, 1960.

[23] *Working Diary of Yue Sanhu*, October 23rd, 1960.

[24] *Working Diary of Yue Sanhu*, December 6th, 1960.

Table 7.1 Statistics of the collective canteens in Li Village in 1960

	Social status of canteen staff				Political background			Animal raising	Quantity	Cooking utensils		
Team	Quantity	Poor peasant	Middle peasant	Rich peasant	Party member	League member	General public	Pig	Other	Pot	Air blower	Slicer
1	4	1	3			1	2			5		
2	3	1	2				3	5		6		
3	4	4				1	3	2		6		
4	4	2	2				4	2		6		
5	4	4					4	2		6		
6	4	3	1				4	2		5		
7	4	3	1			1	3	2		5		
8	4	4				1	3	3		5		

(4) vegetables 5 liang; (5) white radish 5 liang; (6) green Chinese onion 1 liang; (7) garlic 8 fen; (8) pepper 1 fen; (9) cotton oil 4 fen; (10) pepper 1 fen; (11) salt 4.1 qian.

2. Procedure: Cook and smash the fresh yam. Cook its root well so as to remove the bitterness. Then put the white radish shred, smashed wet white vegetables (water removed), smashed yam leaves together. Mix them well with condiments and then make them into ball shapes. Wrap them with a layer of maize meal or flour made of various kinds of beans and steam them in the steamer.
3. Quantity: 387 meat balls in total, 5 liang each. It can afford 122 people if everyone takes 3 with 21 liang left.

(II) Uncongealed Bean curd

1. Ingredients: (1) Soybean 20 jin, 1.63 liang per capita; (2) cotton oil 5 liang, 4.1 fen (a unit of weight equal to 0.5 gram) per capita; (3) green onion 7.5 jin, 6.1 qian per capita; (4) vinegar 15 jin, 1.2 liang per capita; (5) salt 2.5 jin, 2 qian per capita.
2. Procedure: Omitted.
3. Quantity: 335 bowls of uncongealed bean curd, serving 122 people in total, 3 bowls per capita.[25]

The invention of these recipes only changed the dishes forms, but the raw materials were the same. With food scarcity, the inedible were processed to eat. Then people with less physical strength in Li Village began to have swollen body, tumid belly, sagging of the uterus and other serious illnesses. According to the diary of the village Party Branch Secretary, one person died, three people had severe symptoms and 10 people showed adverse reactions (see Table 7.2).[26]

During this period, there was no indication that the rural society was stable. When everybody felt helpless in starving, "secret societies"[27] became active. Just as Xie Nuo said, the secret society in China actually means social and political propositions contrary to the order established (Xie 1992: 198).[28] In a period after 1949, the secret society was called "superstitious sects and secret societies" in

[25]*Working Diary of Yue Sanhu*, December 7th, 1960.

[26]*Working Diary of Yue Sanhu*, November 6th, 1960.

[27]Li Shiyu called the secret society the "secret religion". In fact, as he summed up in his own research, titles for this kind of civil organizations were varied, such as "secret sect", "sect", "secret society religion", "secret religious society", "secret religious association", "secret training association", "secret scripture gathering", "secret religious group", "secret religion" as well as "inferior religion", "lower religion", "superstition group", "heresy religion", "bogus sect", "cult religion", "evil religion", "heterodoxy", "crooked road" and so on (Li 1948: 1).

[28]When studying secret societies, Chinese scholars often concerned about their origins (Li 1948; Qin 1993) while foreign scholars tried to understand them concerning the mass resistance movement in civil society. The study of Chesneaux (Jean Chesneaux) is the classic one in this regard, who has published several monographs on this issue, such as Chinese Secret Societies in the Nineteenth and Twentieth Century (Chesneaux 1971), Chinese Civil Movement and Secret Societies in 1840–1950 (Chesneaux 1972) and Peasant's Revolt in 1840–1949 (Chesneaux 1973). Recent research on Chinese secret society can be referred to Rethink "Secret Society" edited by David Ownby and Mary Somers Heidhues (Ownby and Heidhues 1993).

Table 7.2 Statistics of patients in Li Village under "low standard" of 1960

	Gender					Quantity			
Name	M	F	Age	Identity	Cardinal symptom	Slight	Serious	Dead	Corn subsidy (jin)
Li Xiaofan		1	79	Poor peasant	Aching leg and tumid belly		1		1
Wang Ziyi		1	80	Middle peasant	Aching leg and tumid belly		1		1
Li Xiaonian	1		68	Poor peasant	Aching leg and stomach	1			
Li Xiaowan	1		70	Poor peasant	Aching leg and tumid belly	1			
Xiaoguan's mother		1	74	Poor peasant	General dropsy		1		1
Li Kenei		1	70	Poor peasant	Swollen hand and feet	1			
Li Xiaoshou	1		60	Poor peasant	Swollen legs and feet			1	
Xiaotu	1		40	Rich peasant	Swollen legs and feet	1			
Xiaoyun	1		77	Poor peasant	Swollen legs and feet	1			1
Li Yunnei		1	77	Poor peasant	Swollen legs and feet	1			1
Qingchun	1		36	Middle peasant	Swollen legs and feet	1			0.5
Lanzhi		1	58	Middle peasant	Tumid belly	1			1
Gouwang	1		57	Poor peasant	Swollen face and feet	1			1
Xiaogen	1		32	Poor peasant	Tumid belly	1			

China, which was listed in the reactionary camp and banned resolutely.[29] In Zhao County, one of the superstitious sects and secret societies called "Shengxian Sect" appeared around 1960.[30] According to the county annals, in the name of practicing medical treatment and selling medicines, such organizations conducted secret agitation propaganda, claiming that the existing regime couldn't be sustained so that they should overthrow the Communist Party, etc. It was not until 1964 that the leader of the organization was caught and executed (Chorography Compilation Committee of Zhao County in Hebei Province 1993: 351). Meanwhile, at least three leaders of the Shengxian Sect preached and received apprentices in Li Village. For example, a man named Li Jiqing was the commander of the Shengxian Sect, who once received two apprentices in 1962.[31]

In the "low standard" period, in addition to the Shengxian Sect, Lvzu Sect and other organizations also influenced Li Village.[32] This was actually an expression of their dissatisfaction of hunger through secret folk religious activities. At the time, because of the widespread hunger, the village government was facing a crisis, which could only be solved by feeding peasants.[33] Of course, such kind of slight discontent couldn't stop the building of government. The "emancipation" of poor peasants brought by the Land Reform made villagers see the actual benefits that the

[29]Li Shiyu's field research on North China's secret societies before 1947 has shown that before the establishment of People's Republic of China, there were actually 14 secret societies or secret religions in the North China with detailed field information, namely: 1. Huangtian Sect; 2. Yiguan Sect; 3. Guiyi Sect; 4. Yixintian Sect Longhua Church; 5. Li Sect; 6. Blue Cross Sect; 7. Yellow Cross Sect; 8. World Red Cross Sect; 9. Moral Society; 10. Wushan Society; 11. Tongshan Society; 12. Salvation Protestant; 13. Shengxian Sect; 14. Jiugong Sect (Li 1948: 2). From *Zhaoxian County Chorography*, starting in January 1949, the so-called elimination of "superstitious sects and secret societies" within the whole county included 28 sects: Yiguan Sect, Hongyang Sect, Shengxian Sect, Returning Home Sect, Jiugong Sect, Ruyi Sect, Zuogong Sect, Dadao Sect, Good Life Sect (Hebei Province Zhaoxian County Chorography Compilation Committee 1993: 351).

[30]Shengxian Sect was also known as "Returning Home Sect" or "Good Life Sect", popular in nearby villages of Zhao County. Its purpose was mainly to seek wealth for future life. Good people in this life would certainly be blessed and prosperous in afterlife. You would achieve the same level in afterlife as the one you got when you were alive in this life. In Shengxian Sect, the most attractive ceremony was called "bitter elimination". It aimed at "clearing eyes" to see which heaven the dead stood, which street they lived, how well they ate, drinked and wore. It took money to do this ritual, ranging from five to one hundred yuan. The more you paid, in Shengxian Sect's opinion, the higher the position of the dead would reach and better his food, clothing and housing (Yin 1989: 106–120).

[31]These are recorded in details in the "form for investigation of enemy in Fanzhuang Village Commune" of 1971.

[32]Villagers do not want to mention things related to the "superstitious sects and secret societies" even now, but from their conversation it can be felt that in the years of low index, these secret activities had already existed in the village. A villager who was once a landlord confessed in a document: "In difficult times, I was in Lvzu Sect but I left it a long time ago."

[33]This was just as what Deng Xiaoping wrote in an article: "The years of 1959, 1960 and 1961 were so difficult that the people didn't have enough to eat, let alone anything else." (Deng 1993: 227).

state power could make, even there were difficulties. Everyone was in the same situation in their view because even the cadres were hungry just like peasants,[34] so there were only few complaints. Thus in the later period of People's Commune, when the state power intervened comprehensively in rural area, the resistance from the folk was almost non-existent (Zhang 1998).

In the Cultural Revolution era, a deeper ideological revolution had made changes in the whole social structure in rural China. From an economic standpoint, China's rural economy was stagnant or of slow-growth before the reform and opening-up (Lin 1994). But from the social perspective, the social structure had gone through fundamental changes at that time. Peasants could denounce the corruption of their village leaders while landlords' land could turn into collective property overnight. People considered their society to be equal and impartial as they were governed by a constructed national consciousness. This was a big difference from the relationship between the state and society which had been exercised "imperial power" through "squire power" before 1949 (Wu and Fei 1988). Peasants never paid attention to state affairs before but now they were forced to do that because they agreed on the state's promised liberation. Thus, to realize benefits and goals, they could spare no effort to participate in the modern political power construction in the rural area of the state, which was prominent in the Cultural Revolution. They could mercilessly criticize any rural custom labeled as "bad habit" by the state without any notion of self-interest in mind.

7.5 Cultural Revolution in Rural Area

Political movement like Cultural Revolution was simplified to the elimination of old rural cultural practices during its spread from high-level authorities of the state to the civil society. The understanding of this practice evolved into letting rebellious students in Li Village burn all the objects with writings. Words like "happy and auspicious" and "blessing, wealth and longevity" on the gatehouses and screen walls were eradicated while beautifully carved furniture, pots and dishes were smashed. Calligraphy, paintings and books were burned, and shrines and figures of Buddha were pulled down. If we should identify with statistical figures, "the whole village blocked and damaged 300 ancestral halls, confiscated 839 incense burners and oil bowls, more than 100 Buddha paintings, 30 stone lions and more than 400

[34]According to a village cadre, the cadres at that time ate from the same big pot as villagers. Some of them did eat or take more than they were entitled to but they were under the risk of punishment. It was most common to see that cadres ate an extra vegetable cake when there was nobody in the canteen, but it was absolutely impossible to take food home. He recalled something interesting, in the low index period, once his wife went to a village ten *li* away to sell bean curd for her village. When she went back, she couldn't even identify her village. So she asked the passer-by on the street in Li Village. "Is this Li Village?" She was so famished because she ate nothing for the whole day.

old books. More than 20 people who worshipped "monsters and demons" were criticized (Li et al. 1993: 70).

The "rebellion" of students in the village created an atmosphere of chaos. Then anyone who didn't contribute to this chaos would be subject to the denouncement from the rebellion. The original political power pattern of rural area was completely destroyed when the insurgents gained the power to command the village people. In January 1968, Revolutionary Committee of Production Team of Li Village was established to replace the former rural authorities. The rebellion party learned from those of a higher level, dragging out and criticizing Yue Sanhu, the previous authority figure in charge of the village government. A material concerning his "problems" has the following record:

> … Landlord Li Huabin has on-going sabotage activitis, guilty of seven crimes, so the commune Party reported for arresting him. Yue Sanhu not only let out the secret to him but also personally held a Party Branch meeting in defense for Li Huaibin through chicanery. Landlord Li Laomi wanted to find a wife for his son so he invited Yue Sanhu to dinner three times. Though Yue Sanhu knew the woman didn't want to marry a landlord, he lied that "his family, having a share of three mu of land, is a revolutionary family" to deceive her to marry him.
>
> After Yue Sanhu became a tool of the class enemy, he extremely hated poor and lower-middle peasants. He and his gang brutally beat over thirty poor and lower-middle peasants. They went to every length, with extremely inhumane means, such as "cat blows" (maochuideng), "shaking briquettes" (huangmeiqiu), and "flying" (zuofeiji). The mother of a poor peasant Li Wucheng became blind after being beaten by him. The 60-year-old poor peasant Wang Santing was kicked by a bad cadre Li Shunping and rolled down from a high stage of 13 steps, and became disabled and unable to work. Feng Xiaozuo was so ill that he couldn't work. So he stole a handful of rice from the team and was beaten to death by his niece. The women leader Zheng Junqiao was beaten to miscarriage by Yue Sanhu's brother Erhu and became infertile. Being beaten by Yue Sanhu, the poor peasant Li Jinghui jumped into a large puddle to commit suicide in frosty winter in desperation, and he was later saved out of danger after emergency treatment. Since the poor peasant Li Meisheng didn't cut wheat for the bad person Li Lansuo on the private plot, Li Lansuo was holding a grudge. Then Meisheng's father had a difficult life, so he picked a handful of tender legumes. Li Lansuo, who saw this, broke into Meisheng's home with the backing of Sanhu. Meisheng's father was cooking so Li Lansuo kicked the pot over. The old man immediately kneeled down to beg for mercy, but he didn't let it go and he forced the 73-year-old man to work for him for three days.
>
> Sanhu was also keen on feudal restoration. Sanhu rode on a horse three times with tools in 1963 for matchmaking. In spite of the Party's policy and the impact to people, he held a grand feudal wedding ceremony for his fifteen-year-old son Yue Suoyin, including engagement ceremony, betrothal, wedding banquet and going through three matchmakers and sending six kinds of bridal gifts. The feast was characterized with "fresh scallop", starting with four seafood dishes. There were 36 sets, 108 bowls in total, including one big dish and two small dishes in each set. Landlords were also invited to the wedding while the poor and lower-middle peasants had to serve them. He also invited three painters from Cao Village to paint a huge genealogy in seven days. In this case, he took the lead to continue the feudalism genealogy and the family ruling education. In addition, he asked for cloth tickets of 90 feet valuing 161 yuan from the production team. He organized all carpenters in the village to make a shelf specially for sending the dead to burial, sew mourning dress and mourning cap, rebuild car and sedan to restore old customs in feudal society.

> Among the three brothers of Yue family, the eldest one was a profiteer, the middle one was a unit leader and the youngest one was a branch secretary. "The three sons of Yue family were all harmful to people," people said. Living in big brick house, they wore clothes of fur, leather and silk, ate polished rice and fine rice and drank sweet water sent by the landlord Li Tonglu. Yue Sanhu often said to cadres: "We would rather starve ten people to death than let one cadre get hungry." Under his participation and encouragement, cadres ate and took more than they were entitled to. They wasted a lot and ate fried peanut kernel with brown sugar and fried sugar sesame with honey. Once, twelve cadres had a big meal of deep-fried dough sticks made with more than one hundred eggs and more than ten jin of flour…[35]

Yue Sanhu was the Village Branch Secretary in the "low standard" period and was brought down later for "excessive eating and occupation" in the Four Cleanups Movement. I was asking why Yue Sanhu was brought down and I found that people generally thought he was involved because his wife was from a landlord family. No one could remember whether the material cited above was true but all knew that it was exaggerated. Instead of making too much fuss about the historical authenticity of the above materials, we can see the goal of Cultural Revolution in rural area and why the goal contradicted to the people's customs.

From the excerpts above, we can at least see the presuppositions hidden in the Cultural Revolution under the state ideology control, which include: Firstly, even if the landlord doesn't possess land anymore, they are still on the opposite side to the poor peasants who have lands; secondly, everyone would do harm to the national interest out of self-interest. Therefore, each individual is subconsciously guilty in terms of ideology which should be corrected through physical activities; thirdly, customs are all related to the feudalism, which therefore should be completely eliminated.

The first and the second point imply the core logic why the Cultural Revolution should be conducted in rural area. At that time, it was the dominant state ideology to advocate "philosophy of fight", which required fights between classes, leaders, students and teachers, and sometimes even with themselves. In rural area, the social class structure which was originally present in the subconsciousness was monitored by superego of consciousness, so that peasants always realized that there were terrible enemies like the "landlord" in their lives and they should be always prepared for fighting with them. And the landlords' image was shaped as a weak devil, and they were inherently bad and vicious but with no power. As a result, for the majority of people, they should show confession and plead guilty so that their complex of "evil" in subconscious would always be monitored by the moral promotion of repentance and confession.

During the Cultural Revolution, each landlord in Li Village had a notebook composed of white paper called "notebook of confession to the people". In the book, everyone should write down his own evil in the past and the reflection and sublimation at every moment as well as his contribution to the collective or the nation. They imitated the traditional practice of using the "book of the good and the

[35]This document is not a complete one since its first page is lost. It is in the hand of Secretary Li Jingmin.

evil" to express his ideological transformation process. By the constant imagination of conflicts between "group" and "individual" as well as "love" and "hate", obligations of individual to the community required by the state ideology had been etched in people's mind. Li Huabin mentioned in the above quotation listed several of his guilt in his "confession to the people" as follows:

(1) In 1963, my pig ate shit in the toilet of a primary school. People in the school beat it so I fought with the staff in the school.
(2) In 1963, the team asked me to take care of the yam and later I was dismissed. I thought the village cadre dismissed me so I cursed him behind his back.
(3) In 1963, I thought the village cadre set me up so I said to him that he would soon fall down because cadres could be changed every year. After his falling down, he couldn't set me up anymore.
(4) In 1962, I was in charge of processing flour with grind for the supply and marketing cooperative in Fanzhuang Village. I stole the left several kilos.
(5) There was a peach land beside my private plot which was also occupied by me.
(6) In 1963, there was a public land in front of my house, where I embezzled and built an outhouse.
(7) In 1962, I stole a tree stump and burnt it at home.
(8) In 1962, I picked peanuts in the south of village. A land was prohibited by the team while I didn't know that so several of us picked peanuts there. Wang Xiaoshou who was on duty scolded me. I quarreled with him.

These are my mistaken thoughts so I have committed a great sin. I feel sorry to the state and the people. I'm confessing to Chairman Mao and to the people and asking for forgiveness by the government. I want a fresh start in the future, working more and honoring more obligations and guaranteeing no missed obligation. I will accept the transformation and supervision.[36]

By finding the "sin", everyone willingly obeyed the transformation by government agencies. And this transformation was often realized by physical labor. Thus at that time, "labor reform" was extremely popular. Whomever was in conflict with the state in thoughts would criticize herself and show his commitment to transform his own thoughts through labor. Excerpts from the "statement of confession" can prove this:

I committed huge faults in the past. In transformation, I have participated actively in group work and voluntary work in which I maintained the quantity and quality every time…

I had a backward thought after the Four Clearnups with serious individualis…. In the future, I will transform myself through hard work in the team and listen to the team leader to shoulder the hardest and dirtiest work…. Finally, I will stand on the side of people to begin a new life. Revolutionary people and Party leaders, please exert tests on me and help me out….

Since I was seriously keen on exploitation in the past, I wasn't been transformed. So I have committed great sins. In these years, under the leadership of the Party Branch, we have learned about Chairman Mao and the party's policy for improvement, which made me deeply grateful. I want to learn from the poor and lower-middle peasants every day, listen to

[36]It is selected from the document provided by a villager.

> Chairman Mao, follow the Party and transform myself through working to take off the title as landlord. Now I would like to write down my achievements in the transformation for the village leadership's review….[37]

In addition to the transformation and monitor of thoughts through labor, the village government would monitor people who published comments of dissatisfaction with the government or who "fought" with the state in the past through regular registration regime or "investigation".

From the archival documents at that time, the county required the village to monitor the following eight types of people: 1. people of dictatorship including landlord, rich peasant, reactionary, evil and other ten kinds; 2. backbone of the Catholic Church; 3. backbone of various secret societies; 4. KMT spy; 5. people with overseas relationship; 6. KMT members, the youth corps members and people related to public security in KMT period; 7. people with fixed nature but without "title"; 8. people released after education or upon completion of a sentence. The county required the village to collect this statistics in order to know about "evil people" spreading in rural area.[38] Once there was chaos in the village, they would start with investigation of these people. According to people in the village who were registered, they couldn't sleep well at night. Maybe they would be sent to the revolutionary committee for inquiry at midnight.

The most impressive memory for revolution to the village people was that customs were eradicated as feudal stuff. Customs were mainly manifested in weddings and marriage and civil religion, which were called the "four olds" in the vocabularies of that time. Meanwhile, the state realized the eradication of the "four olds" through advocacy of "simplifying" weddings and funerals or removing folk temples.

But from the perspective of my investigation, when the state was strongly monitoring civil society, customs would disappear or hide. But once this monitor was slightly relaxed, customs would slowly recover to a certain extent. When this happened, the state would strongly control it and customs would be pressed down once again. This cycle of "monitoring and recovery" was the most important aspect of power competition in rural area during the Cultural Revolution. The state often resisted the rise of folk customs by using the so-called "ideological weapon" like "political movement" while customs would be recovered in some legitimate way in the place where the ideological control was the weakest.

Of course, various customs are monitored by the state power to different extent. At that time, customs like wedding, marriage and funeral maintaining rural lives were monitored relatively weakly often through what was called "ideological and political work" to persuade people. The existence of these customs was deemed

[37]It is selected from the document provided by a villager.

[38]In the No.1 document of "Zhao County Revolution Guard (71)", there is the following text: "Follow the great teachings by Chairman Mao including 'raise one's vigilance and defend the motherland' and 'get ready to fight', in order to know the situation promptly and accurately, guide the battles against the enemy and crack down the existing sabotage by class enemies, the investigation and registration forms are now distributed, so please fill your forms carefully…."

justifiable through a legal channel approved by the nation. A documentary material can prove this.[39] In the early 1970s, when Li Village and surrounding villages held weddings resulting in the so-called "four olds' evil wind", the county required the village government to conduct in-depth "investigation" to see what kind of people were involved and how they did. There was a Gao Village, six miles northeast to Li Village. After investigation, leaders in this village reported to the leaders that in the village banquet went before the proposal. Cigarettes were given as presents no matter they agreed to the marriage or not. There were five tests in the wedding. So there would be a feast with much food and drinks for the wedding. For example, a rich peasant's child called Wang Huaitong spent more than 700 yuan for food and gift, more than 700 jin of food at his wedding. He slaughtered a pig just for inviting the matchmaker for a meal. When a bachelor got married in 1969, he was afraid of being viewed as poor. He borrowed grains here and there so that his debt won't be cleared several years after he got married. Thus words of an old poor peasant can be used to make a conclusion: "The four olds still do harm to people. So if this unhealthy trend is not stopped, capitalism will be restored."

The village leaders believed that it was the "conflict between two routes", and immediately set up "a team to establish the new". The secretary of the village was the leader so it was also known as the "secretary as command" in military terms. The director of the Village Mediation Committee, militia commander and other leaders participated in the ideological work of people.[40] From the summary of experience submitted to higher leaders, they used four methods including "learning", "persuading", "criticizing" and "changing" to "stop this four-old-evil wind quickly". The first three were actually the so-called "thought work" while the fourth one was a practice in "social tradition transformation". For the old marriage customs, they were legalized by these amendment measures:

> … Measures to destroy the old customs and establish the new were practised: Replace invitation card and matchmaker with decision-making meeting; in the marriage ceremony,

[39]The following case cited is based on the "Issue 19 of *Political Work Brief* edited by Political Department of Zhao County Revolutionary Committee on December 22nd, 1973" stored in Li Village.

[40]This temporarily united organization at village level was in fact an imitation of the particular organization at a higher level. At that time, this kind of temporary leading group could be seen everywhere from central government to province, city, county, commune (town) and production team (village), which sometimes were referred to as the "special team". It could gather all kinds of backbones in a group. According to the village leader, some important issues could be solved quickly without obstacles from any authority. During the Cultural Revolution, the establishment of a special group to solve a practical problem required by the higher authority was seen as "a war of annihilation with the mass". Moreover, the name of the organization resembled one of military organization in the past. For example, in the group, there was "the first in command" or "the second in command". Generally, the secretary of the Party was "the first in command", which was called "secretary in command" at that time. The arrangement at the village level was not as formal as that above township level. The elimination of such extravagant wedding customs was considered as "a war of the people". The state power in the above manner can still be seen in the village today such as "tax collection", "family planning" and "fighting against crime", etc.

> learn about the teachings of Chairman Mao and stress the benefits of social tradition transformation. Newlyweds should show their determination. Replace marriage proposal and wedding banquet with social tradition transformation ceremony. Replace kowtow and formal bows with sharing meetings; replace betrothal gifts with small production tools. Change the marriage process into a study session of Chairman Mao's works, give ideological and political education. The Communist Party member Jia Renji only spent two yuan for his marriage. Baskets were used as gifts. His wife started working in land right after she got married. Their positive revolution attitudes and works to promote production were praised by commune members.[41]

In this paragraph, we can see that this "social tradition transformation" in fact maintained the fundamental principle of marriage customs. For example, the most popular "invitation card and matchmaker" became the "decision making meeting". According to Li Villagers, they also held "decision making meeting" with matchmakers but they were called "witnesses" instead of "matchmakers". In addition, the transformation of customs imposed by the state was reflected in the political penetration into folk customs. For example, marriage ceremony was transformed into a ritual to express loyalty to the national leaders. Through this transformation of folk customs, the new-custom-system was accepted by the national administration system, becoming part of governance in certain period and being institutionalized, which was the process called "getting rid of old customs and establishing a new culture".[42]

Customs like folk belief were very difficult to recover at the time, which was meant to be "cracked down" instead of being "transformed". Therefore, the state supervision was very strong. Although *Laomu* (a local goddess) was still enshrined at homes in the village, they were only worshipped by old women, which was very private and secret, not to be disclosed to the public. Whoever wanted to worship the Buddha would be not only strictly investigated by cadres in the village but also strongly supervised by the young family members or neighbors. From the existing archives, we can see many records about detecting folk religious organizations by the state during the Cultural Revolution. For example, in the document of 1971, the detection of Qiyang Sect in Zhengding County north to Zhaoxian County was recorded.[43] From such a text, we can clearly see the the secret society was cracked down by the government for multiple times:

> The counterrevolutionary Qiyang Sect was previously called "People and Heaven Sect", "Goodness Sect" or "Access to Heaven Sect". In 1955, the leader Fu Baojun was arrested and punished by law because of counter-revolutionary activities. In 1968, he was released

[41]Political Work Brief edited by Political Department of Zhao County Revolutionary Committee on December 22nd, 1973, Issue 19, pp. 4–5.

[42]Helen Siu considered that after the changes of life rite, though traditional style in the form was kept, the ceremony participants no longer related the ceremony with supernatural power structure. They were more concerned about the construction of actual relationship in social life. Thus, the recovery of various civil ceremonies in the present rural China made cultural fragments recycled in the new situation (Siu 1989: 134).

[43]The Public Security Committee of Zhufutun Production Team of Zhengding County, "How We Detected the Restoration of Counterrevolutionary Qiyang Sect", November 17th, 1972.

> to go home. In 1971 winter, he committed crimes again, changing "Access to Heaven Sect" into "Qiyang Sect". He contacted one previous sect member, lured five new members into the sect, and was trying to lure four more people into the sect. Criminal Fu proclaimed himself as "the true sect" and appointed "Marshal", "Advance General", "Seal Master", "Internal Minister" and other counter-revolutionary positions…

In 1958, there was a "leader" of Shengxian Sect released back to Li village by the Public Security Bureau. When he tried to resume the organization in 1970, he was captured and criticized. In addition, several leaders of Lvzu Sect were criticized by the government.

In the decade of the Cultural Revolution, the non-institutionalized system of rural area was stricken and the social order which had been controlled by customs was then supervised by the ideological surveillance of the politicized state ideology. There was mutual suspicion between people in the village while the authority of the family was not able to cooperate and communicate with the power of the state. Individuals were classified among groups of different levels and subject to disciplines accordingly. The old customary forms were completely broken but they acquired legitimacy from the national ideology in other forms. Religious folk beliefs were "cracked down" like secret societies, so the collective religious lives disappeared. This situation was in obvious contrast with the revival of traditional customs after the 1980s (Wang 1997: 142).

In all, after almost 30 years of the transformation of ideology and lifestyle, the power pattern of rural area has been completely changed. By promising peasants their emancipation and carrying it out (Hinton 1966), state power took control of the production and the life of rural peasants while non-institutionalized civilian authority system and folk religious authority system became underground. Thanks to the authority system of the state power distributed in rural area, the national ideology took place of the non-institutionalized or even the institutionalized legal authority system. And by the so-called "mass movement", the individuals' selfishness concept was eliminated in order to unify people under the national consciousness of "Chinese nation" (Unger 1996; Duara 1995).

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Chapter 8
Pluralism of Authority

Law cannot maintain order by itself, which has to be supported by power…. This power would not be in the hands of one person and manipulated by him, but would be operated and used by many people, thus an arrangement or order is needed for using it. Therefore, there is a power structure or system to exercise power in every society.

Yang Maochun (1980: 44)

8.1 Concept of Privatization

With the implementation of the Household Contract Responsibility System after 1980s, the production mode with household as the core was practiced and further produced the privatization concept of household economy (Kelliher 1992). An institutional innovation had driven a fundamental change in the entire social and economic life. When the dominant ideology of the state had accepted the "market economy" concept of Western countries and turned the focus to the economic construction, the "privatization" concept recovered and "resurged" because of the relaxed ideological and political control (Hinton 1991). In this case, the general understanding of rural China might be summarized as follows. Privatization production made rational calculation the basic principle of interaction between the village government and villagers; village cadres won a position of authority in the village by "doing practical things" for villagers; due to the openness of the national ideological monitor, villagers constructed new forms of civil authority outside the field of state authority. This non-institutionalized authorities maintained mutual competition and dialogue relation with the institutionalized authorities including township government and township court.

In addition, from the above description in historical documents of an ordinary village in North China, we can see that from the Land Reform to the end of the ten years Cultural Revolution, the political power of the state had fully penetrated into the countryside in the respect of regime construction and social life in rural area through the transformation of individual ideology. At the same time, the early modernization of rural regime was gradually evolved into collectivization under

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public ownership. This rural collectivization had been most fully developed during the Cultural Revolution when private interests were nearly non-existent under monitoring (Kelliher 1992).

However, as the state redressed various types of people with bad titles or under monitoring after 1976,[1] the state loosened its control over personal political ideology, which led to a weaker monitoring of village government over private interest and hence provided a larger development space for the from of privatized production. This form of privatization production further promoted the rationalization of people's relationship (Little 1989: 174–181) while the new way to increase family property led to a growing consciousness over the concept of personal property rights (Yan 1998). According to the proportion conversion of inputs and outputs of individual or family, they signed the contract with the village, which became an important part of the relationship between the individual and the village collective power in rural area during the reform period (Oi 1989). Therefore, in a certain sense, when the concept of "contract" became synonymous of China's rural reform and popular in rural society, a potential contractual relationship between villagers and between villagers and the village government gradually rose. The state also constantly introduced various rural policies to enable the privatization of rural production form to become more legitimate (Kelliher 1992: 177) as well as to make peasants to be more aware of the contractual relationship.

In addition, since the private mode of production was accompanied with the accelerating commercialized reproduction, disputes between individuals and between individuals and the village government had increased due to the breakdown of their contractual relationship. Later we will read many cases of arrears due to the emergence of mutual disputes between individuals. It is necessary to quote here a dispute caused by the fruit contract between a peasant and the government of Li Village.

This is a case that a villager sued the Village Committee. In 1983, except a small quantity of pear trees were left to the village, the rest of pear trees collectively owned by the village should be contracted and assigned to each household in accordance with the "contracting to household" policy required by the state. Before the contract, the village organized peasant representatives and fruit tree technicians to "score" all fruit trees to be contracted according to their age, species and growth status. After reviewing the scoring, each point was calculated as 50 kg pears. However, in the registration process, a staff recorded 12 points for a tree with only 0.2 points by mistake, which led to a difference in 11.8 points and was equivalent to a loss of 590 kg pears. Such a tree was just assigned to the villager Jia Yuhe. According to Jia Yuhe, when the village built road, another 1.5 points were lost, so the total loss was 13.3 points, which equaled to 690 kg pear. The village checked

[1]Kelliher had a view that the "privatization" appeared widely in the society was directly due to the relaxation of personal ideology control by the state in rural area. This happened when public resources and undertakings were controlled by the private. The society would turn from the public control to the private control in all directions, which had really occurred in the process of Chinese rural reform (Kelliher 1992: 176).

and confirmed the mistake of 13.3 points. However, all trees had already been contracted with others and there was no way to readjust the loss. Then the village government unilaterally decided to compensate Jia Yuhe at the price of 0.12 yuan per jin for his loss. Jia Yuhe thought the price was unreasonably low and asked the government to solve the problem. The village government was dilatory in giving a solution. Nine years later, Jia Yuhe appealed to the court, asking for a compensation of 13,000 yuan from the government for nine years. He asked for such compensation because the average pear price was 0.6594 yuan per jin in 1992 as he cited, while the pear tree of one point could produce 176.2 jin pears. So the total loss was 14,432.04 yuan and his requirement for compensation was reasonable in his opinion.

After the case was filed, the legal representatives of the village were called to answer the case. Cadres in the Village Committee explained that the registration error did occur but Jia Yuhe was not the only one having this problem; in total there were 32 households. Pears accounted for 0.12 yuan per jin in 1983 and fixed compensations had been given each year. Like other households, Jia Yuhe received compensations each year. The loss due to road repair involved 42 households including Jia Yuhe who had also received the compensation each year. Therefore representatives of the village considered that Jia Yuhe shouldn't ask for more reparations any more.

After verification and investigation, the court certified that both sides were telling the truth. As the plaintiff Jia Yuhe had received a fixed amount of money year by year from the Village Committee, the defendant fulfilled its compensation. In order to stabilize the rural economy, the court "rejected the plaintiff"'s request; the legal fare of 300 yuan should be paid by the plaintiff".[2] Later, Jia Yuhe hired a lawyer from the province and continued to appeal to the intermediate court. Finally, the intermediate court believed that the county court's decision was "without clear facts and sufficient evidence".[3] The original verdict was dismissed while the collegiate bench was asked for rehearing. There is no final decision until now.

From this case, we can see that peasants had conducted a rational calculation to strive for their own interests. As an agent of the state power, the government insisted in its own rules and was reluctant to modify certain provision. It is actually relatively easy to judge this case, but there will be great hindrance in the implementation. As the village cadre said: "We also know that making compensation according to the price in 1983 is not very reasonable but we don't have any other choice. If we make compensation according to the actual price of each year, how many investigations do we need to do? And above all we cannot afford such compensation to so many families. In fact, there is nothing wrong to refer to the price in 1983 because it was the time when the contract started."

Of course, villagers and village cadres tended to solve various disputes between them through mutual concessions in private instead of appealing to the court.

[2]Document No.7, Zhao County People's Court (94).

[3]Document No. 121, Shijiazhuang City (94).

Because deep down villagers didn't want appear in the court, except when they felt the need to engage in a lawsuit. Villagers felt that anyhow the village cadres had power so if they didn't get along well with them, there would be bad effect on other aspects of their life. Thus lawsuit related to the village cadres should be avoided. They hoped that cadres could make some concessions so that they could be friends as before.

8.2 Establishment of New Authority

As mentioned above, with the implementation of the Contract Responsibility System in Li village in 1983, each villager was gradually separating from the collective supervision. In the eyes of villagers, village cadres were only agents collecting food taxes and contract fees for the country while they themselves were contractors of national land. The previous authority of village cadres who could dominate the individual work and collective distribution seemed disappeared. However, when such an old authority gradually disappeared, it was replaced by a new form of authority. The original village cadres gradually turned into the agent of state power and established a contractual relationship with peasants, thus a diverse pattern of the rural authority reappeared. In a certain sense, the village cadres established a new authority through the implementation of national policies and laws as well as reasonably solving disputes in the village from time to time.

Implementing family planning policy was the most important part of cadre's work which reflected how laws and decrees of the state were implemented in rural grassroots community. Such a simple logic as "getting married and having children" had been challenged in rural area. As to villagers, it would take a lot of money to have children. The "national policy" of family planning had been transformed into a simple administrative procedure: people who had more children than state allowed should be fined. It was referred by the peasants as "note-consuming". In general, there were two major types of penalty: getting married under the legal age of marriage and giving more births than state allowed. According to the Marriage Law of the state, the minimum legal age of marriage for men was 21 years old and for women was 18 years old. In Li Village, anyone getting married under the legal marriage age and having children would be fined 2,500 yuan for the first child, 10,000 yuan for the second, 15,000 yuan for the third and 20,000 yuan for the forth and above. In the first half year of 1997, the Village Party Branch formulated the relevant provision of the family planning work which was called by villagers as "local policies". The full text of the provision is presented below, which was broadcast through loudspeakers in the village during the major inspection by their superiors:

> Family planning is a long and arduous political work and a basic national policy in China, which is a matter concerning the survival of the Chinese nation. Whether the Party's general secretary or ordinary people, everyone is concerned about the family planning work. It is directly related to the wealth of the state, the strength of the people, the

realization of a well-off society and advance of the world, which is the root of the national prosperity. Therefore, the State Council and governments at all levels including provincial, municipal and county ones have had a series of regulations, policies and instructions from leaders, and according to the real situation in our village, it is specially regulated as follows:

I. 2,000 yuan will be fined if anyone breaks the new rules of the provincial family planning, including having a child under the legal age of marriage. If the second child is born under the legal age, a fine of 10,000 yuan should be paid with a proof of sterilization before April 29th, 1997. After 8:00 pm of April 29th, the fine will be 13,000 yuan according to the new regulations of the town.
II. After April 29th, 1997, 150 yuan should be paid for the Birth Approval Certificate for the first child under the legal age of marriage. No certificate fee for those who get married legally. 2,500 yuan will be fined after April 29th for those having children under the legal age.
III. In the case of getting married legally and having a second child, after paying for 2,620 yuan for the Birth Approval Certificate, there will be no more fines. In the case of those getting married under the legal age and having a second child, 3,620 yuan has to be paid for the Birth Approval Certificate. After the child is born, according to the requirements of the town, there should be a fine of 10,000 yuan and the mother should have the sterilization operation. For those children, whether his is first born or second, they will get registered after their parents paying the money; the registration will be served as a document to enter school in the future.
IV. High-profile recognition and material rewards will be given to couples in accordance with the Marriage Law and having children at legal age. Election of Model Couple and Five-merit Family will be held to fully reflect the family planning policy of the Party.
V. It is hoped that the majority of Party cadres, teachers and villagers should comply with the above provisions and implement the "six terms to be publicized" and "supervised by one agent". Cadres and their relatives should be supervised first and they themselves should also monitor each other so as to achieve true openness, fairness and justice.

(Note: Children in families with Birth Approval Certificate can get registered only after fines are paid according to provisions related to the date of birth.)[4]

Peasants have been used to such "local policies" and for having more children they could pay more. Many families had more than three children, including two families with even seven children. However, in regard of the family planning policy in the village, villagers still had a lot of complaints about its unfairness. One day, staff of family planning department of the town government came to the village to implement the family planning penalty. When they left, a young man confided to me:

Isn't it obvious that fining us for having got more children is an opportunity for cadres to get rich? The young man riding a motorcycle that you just saw works for the family planning department of the town government. He personally told me that they had a monthly bonus of 2,000 yuan. Look, isn't it from us? This is so unreasonable! Now it is more obvious when the goal of family planning becomes a task to fine people. This year,

[4]This was a concrete way to fine those who had violated the family planning policy of the state within a year by the Village Committee and Village Party Branch before the annual "family planning work inspection". The original text of the record here is stored in Li Village.

> there is a task of 150,000 yuan of fines for the village. Leaders will no longer care who has more children. Rather, they are waiting for the money in annual inspection of the family planning work each year.[5]

Family planning was not an easy task in rural area. Many cadres who were in charge of this work offended the villagers and they were ended with resignation. Obviously, the family planning had shown the penetration of modern state power into civil life. The state wanted to control the number of birth so it required local officials to implement this policy. But local officials actually had dual characters, who were both agents of the state at the most basic level and members of the local community to communicate with peasants. Thus, they were protectors of local people on the one hand by making peasants accept mandatory national policies with modified local policies. At the same time, as local officials with low income, they tried to get compensation for their own interests from the implementation of national policies.[6]

In the local family planning work, some village cadres concealed the actual fertility number to reach the quota set by the state. This "concealment" was in fact realized by issuing the form about "details of women at childbearing age" in the village. It was a form with contents which might be not true, such as age of marriage, number of children, etc. Women at childbearing age would be asked to remember the details. When superior authorities came to check, they should recite them well to pass the test. The Village Committee also formed teams of cadres, responsible for meeting the specific requirements for different inspections. The following is a copy of my record in the village to show a number of specific measures in response to the inspection:

> Cadres responsible for different areas should pay attention to the following issues:
>
> I. Make it clear to the head of household and all families of the newly-wed:
>
> (I) Lock the door; (II) Never tell others they are married.
>
> II. Make it clear to women who are taking medicine that they are using Grade 18A (Norgestrel) and condoms because they don't feel well.
> III. Ask members on the list to remember the year of birth and the date of marriage written on the form. They must not show the form to the inspection team. They must throw it away after reciting.
> IV. For parents and the whole family with one, two or three children, hide the facts that shouldn't be disclosed. In addition, children not in the record should leave home or live in their relatives' home.[7]

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[5]It is selected from an interview record with a villager on April 18th, 1997.

[6]Duara once had a detailed analysis on the two-side personality of the low-status local officials in the completion of state tax in the late Qing Dynasty. The magistrate of a county, as official state officer, wouldn't do the job themselves, so they could only entrust local officials to complete tax tasks. "As a reward for their work, they were entitled to plunder the people without any strict supervision…. All the disadvantages about local official should be understood according to the mode of state agent rather than corruption" (Duara 1988: 46–47).

[7]Record of the Family Planning Meeting of the Village Committee.

In fact, village cadres played the role of state power agent by balancing national policies and the interests of villagers through a compromised implementation of national policies to make villagers feel the benefits. In this process, the new authority of the village cadres could be gradually built up.

Another way to establish the new authority of village cadres is that they could reasonably and effectively mediate the conflicts in the village due to the imbalance of benefits distribution. In 1993, when the village redistributed trees,[8] conflicts between village cadres and villagers happened. Solving these conflicts successfully was always regarded as an honour to village cadres. Because after the redistribution, they would not only keep their authority position, but also gain the trust from villagers.

Li Village distributed collective pear trees in 1983 for the first time. It was the time when peasants had really enjoyed the benefits of small size production run by each household. They could organize their work and life instead of following the rhythm of the original collective life. They could earn more money through their own hard work and do legitimate business. But this happy life lasted only for about ten years. And after that, villagers started to have different experience, "some were happy and some were sad". This kind of "happiness" and "sadness" was in fact fermented when they first got their distributed fruit trees. After the implementation of the Household Contract Responsibility System, land to grow food was allocated to each household with 0.8 μ for each family member. Different from various readjustment discovered by Liu (1997) in a village in Hebei Province, from 1983 to 1997 when I did the survey, land to grow food hadn't been readjusted in Li Village. But in 1993, villagers in Li Village had a strong request for redistributing the land settled in 1983 according to the population at that time. Of course, compared with people with such strong request, some people didn't want to redistribute the trees. I will show you examples to discuss these two kinds of people. For example, someone in household A strongly requested to redistribute trees because he didn't get married and lived with his parents in 1983. A few years later, he was married and got a property from his parents. Pear trees were also included in this property. Suppose that his wife was coming from another village and then they would have children. But his wife and children were not given trees in the previous distribution. The whole family had to rely on one person's share of trees, which was extremely insufficient. Therefore, he wanted to redistribute the trees, hoping that other members in his own family could get trees this time and they could get more pears.

Let us further assume that there was another family who didn't want the redistribution. There were six people in the household B in the first distribution. In the family, two of the four children were daughters. The daughters were not married in the last distribution and therefore they also had a share of trees. A few years later, the two daughters got married and left pear trees to the family. The family actually had more pear trees, so they didn't want to the redistribution.

[8]In Li Village, there is a system to distribute collective pear trees to each household according to population change every 10 years.

Population change is one factor for redistribution, while there is another element to be considered. In the first distribution, no matter good or bad, big or small, trees were distributed evenly through drawing lots but they were absolutely not the same. There was good luck and bad luck. Those who had good luck and good trees didn't want them redistributed, while those with bad trees wanted a change to get some good ones. The rest of people who got trees which were neither good nor bad, with no big change in the family population, were neutral.

In Li village, issues like tree distribution were decided by the Village Party Branch and Village Committee. The village secretary had the discretion to make the final decision. At that time, the village secretary in charge of the tree distribution told me that he felt proud of himself and was happy to do the right thing when he recalled the situation. Before he made the decision, his house was always filled with people. Some came to his house for the decision to redistribute trees as soon as possible while others came to see how he would deal with it. But he wouldn't make the decision promptly. When people who didn't want the redistribution found that they might have done the opposite decision, they organized people to sue him in the county and wanted to take him down from the office position but they all failed. Later, when the secretary discovered more and more people wanted to redistribute trees, he made a resolute decision to do that. According to the secretary, it was raining when he made that decision. People with the same proposition held umbrellas for him in crowds to send him back to the Village Party Branch. He felt that his prestige among people was improved a lot. It was summarized by him that this kind of prestige enabled the authority of the village government under his leadership to last until now.

The next step was to determine how to distribute trees so that everyone would agree. It was a difficult decision, every family had different situations. Some women married Li villagers but didn't transfer their registration status, some men moved to another village, and some families had two or three more children that didn't comply with the family planning policy. If they came up with some rules based on their state given power, they were sure that it would be against by villagers. The secretary discussed with village cadres and decided to ask villagers for a plan to distribute trees by themselves. For that Village Committee had to form a general guideline, which turned the issue of "how to distribute trees" into "problems might occur in the distribution". The secretary said that the village cadres and he had kept thinking of these problems day and night and listed more than 20 problems at last. Then the villagers could decide how to solve these problems. This was a chance for the village cadres to establish new authority because everyone could spare no effort to get more in distribution of benefits like this. For example, if one's daughter had already got married but her registered residence was still in the village, she could get trees in the case of trees distribution according to household register; families with twin children would like to distribute trees to both of the children; some of them had planted new trees in the land so they wanted some compensations. It was a long seesaw battle between the individual interests of villagers and the idea of distributing the state property they represented evenly to each household in accordance with rules approved by all. For example, some suggested that the

children of women from other villages who remarried the men in this village should not get trees. But some considered this was a discrimination against children and women, so they should also get trees. Finally, the following agreement was reached between the Village Committee and the village representatives.

Question 1: How long is the contract for the new trees?
Rule 1: Ten years.
Question 2: What is the basis to check the contracting population in 1994?
Rule 2: (Article 1) Based on the population involved in the first distribution in 1983. Deaths, out-migration and newly-born people are not on the list for new distribution. Newly-born baby should pay collective accumulation capital (Article 2). Women have extra child with contraceptive operation, should pay extra 50% of fine, except those with new contraceptive operation.
Question 3: How to deal with women who got married with our villagers?
Rule 3: (Article 1) For legally married couples, with marriage certificate should pay collective accumulation capital of 500 yuan (Article 2). Villagers in illegal cohabitation who have once been fined should pay collective accumulation capital of 700 yuan while newly-weds after the autumn of 1993 are excluded.
Question 4: How to deal with a man who lives with his wife's family and gets registered in the village of his wife (the wife is from daughter(s) only families)?
Rule 4: (Article 1) Upon the agreement of Village Committee, collective accumulation capital of 500 yuan should be paid (Article 2). Legally married couples should hand in the collective accumulation capital of 500 yuan and their children should be treated as ordinary villagers.
Question 5: How to deal with wives who get registered in our village?
Rule 5: They can only get trees from only one village.
Question 6: How to deal with those who have only one child with registered permanent residence?
Rule 6: (Article 1) People having one child with marriage certificate should hand in the collective accumulation capital of 300 yuan (Article 2). People having one child without marriage certificate should hand in the collective accumulation capital of 500 yuan.
Question 7: How to deal with people with fake registered permanent residence?
Rule 7: We should check during this adjustment, so those who get fake registered permanent residence once reported by people, the residence will be eliminated. The paid fees for children born outside the state plan will not be refunded and another penalty of 10,000 yuan will be charged. If the penalty is not handed in, there should be one person less from the total number of family members for readjusting quota of the trees in the household.

Question 8: How to deal with households with more than one child?
Rule 8: (Article 1) People who have paid the only-one-child fee before have to pay the collective accumulation capital for each child, which means 300 yuan for the first child, 500 yuan for the second child and 900 yuan for a child in the third birth and above (Article 2). People who have not paid the extra child fee before have to pay another 3,000 yuan for two children, 5,000 yuan for three, 8,000 yuan for four and 11,000 yuan for over five in addition to collective accumulation capital required as the above.
Question 9: How to deal with twins?
Rule 9: Families with twins have to pay penalties according to number of children. Those who have not paid penalties before have to pay 3,000 yuan, 5,000 yuan, 8,000 yuan and 11,000 yuan respectively as required by the above rule.
Question 10: How to deal with wives from other village with children from the previous marriage?
Rule 10: According to the divorce decree and the immigration certificate, people with more than two children have to pay 3,000 yuan, 5,000 yuan and 8,000 yuan respectively. They also need to have sterilization operation. Then they can contract for trees. Other reasons are invalid.
Question 11: How to deal with illegal adopted children?
Rule 11: (Article 1) People with no child should not adopt children from other villages. If they adopt children from our village, they should pay penalty according to the number of children the biological parents had and get the adopted child registered as well as pay the collective accumulation capital (Article 2). If people have their own child but adopt more children and if penalties for extra child have been paid already they should pay the collective accumulation capital of 5,000 yuan for each child again; if they didn't pay penalty before, they should pay 3,000 yuan, 5,000 yuan and 8,000 yuan respectively as well as 20,000 yuan as the collective accumulation capital.
Question 12: If people who were originally from this village but migrated out or they didn't move in before but want to move to the village now, what should we do?
Rule 12: The collective accumulation capital of 20,000 yuan should be paid first.
Question 13: How to deal with motor-pumped well dug on the contracting land?
Rule 13: Subsidies will be given after the new user certificate it can be used. But the price will be discussed and decided in the next spring.
Question 14: How to deal with the passages in the orchard?
Rule 14: Public passages have been planned. Everyone should protect them. No one should use the passages for private uses and they should be kept clear.

Question 15: How do we deal with small trees recently planted?
Rule 15: Trees will be reclaimed according to the size of the tree and price will be set in the future. Trees of no use because of overcrowding will not be reclaimed. In principle, the person who planted the tree will be asked to move it away, but they can also discuss with the new contractor of the land.
Question 16: How to deal with wheat or oilseed rape planted under the trees?
Rule 16: The decision will be made through consultation of the new and previous contractor without interference of the village.
Question 17: How to deal with peach trees, apricot trees, jujube trees, apple trees and all timber trees in the pear orchard?
Rule 17: All will be eliminated. Or they can be dealt with through consultation of the new and previous contractor.
Question 18: How to deal with villagers with arrearages, including penalties for having given more births than allowed, contract fees, forestry property taxes and so on?
Rule 18: Anyone can be qualified for tree distribution after all arrearages are cleared.
Question 19: How to deal with college students and people who have been assigned jobs elsewhere?
Rule 19: College students are qualified for tree distribution while people who have been assigned jobs are not.
Question 20: How to deal with military personnel and those having been turned into cadres?
Rule 20: Military personnel in active service and cadets are qualified for tree distribution while personnel having been turned into cadres or volunteers are not.
Question 21: How to deal with retired cadres or retired employees of the state?
Rule 21: They are not qualified for tree distribution.[9]

In some sense, this is a set of village rules and agreement with real effect. The logic behind it is very clear. In order to redistribute the contracting right of pear trees evenly which were once collective property among villagers, as the agent of collective property, village cadres and villagers had to reach a mutually acceptable agreement or contract. Such a contractual relationship between the lessor and the contractor was established by the villagers based on equal participation to formulate the rules for distribution. Once there was inequality, the villagers could formulate rules for compensation through the authority of village government so that anyone taking more in one respect had to compensate in other ways. Of course, the result was still unsatisfactory in some way. For example, someone got bad trees in drawing lots while someone was fined because he had more children than the state policy plan allowed. But at least villagers wouldn't be dissatisfied with the

[9]The original text is from the mimeographed script of "Adjustment for Contracting Plan of the Fruit Tree Issued by Li Village Party Branch" stored by the secretary of Li Villager.

government authority in distributing trees. They were more likely to attribute their dissatisfaction to bad luck or their children, because they felt no excuse to blame those rules, which were implemented upon the consensus made by their representatives and village cadres. Thus, in their view, these rules for distribution set together were reasonable and fair.

Obviously, the authority of village cadres was clearly established through tree distribution. This authority depended neither on the clan leadership nor on the full agreement of villagers with the power of the state, but on the village cadres' adherence to a fair procedure to solve practical problems.[10] Village leaders only had to follow the practical procedure acknowledged by the village community, thus their status as village cadres was reinforced.

8.3 Role of Agent

Siu (1989) had done a unique study on a town community in the Pearl River Delta. In her view, with the penetration of the state power to rural areas, village became a "celluate" unit controlled by the state power while village cadres were the intermediaries between the state and the society, balancing the interests of state power

[10]Bao Zheng, the prime minister in the Song Dynasty, also called *Baogong*, a legend figure in civil society, is a concrete manifestation of the Chinese's understanding of authority. *Baogong* almost became the model of authoritative figures or the prototype of the Chinese's understanding of authority due to his impartiality. People as high as a leader of the state or as low as a village leader can only establish their authority in others' heart when they act as the "honest and upright official", the meticulous *Baogong*. In civil society, the story of "*Baogong*'s reincarnation" is used to show the reappearance of impartial social authority while the story of "*Baogong*'s concealment" is to illustrate the lack of such authority in the society. For example, in Hebei Xingtai area, "*Baogong*'s reincarnation" is widely spread. In order to illustrate the above point of view, part of the record is as follows: "*Baogong*'s son was named Biemo and he also wanted to be an honest and upright official. But he didn't want to imitate his father's approach. He always wanted to figure out a new way. Therefore, he was against his father in everything. He often set himself against *Baogong*; when *Baogong* wanted to beat the dog, he wanted to catch the chicken. In this way, the father and son argued for a lifetime. *Baogong* saw the disadvantage of his willfulness, which was not beneficial for his future, so he wanted to find a back-up plan. Before his death, he called Biemo around and said: "After I die, do not waste money. Just put me into two stone cisterns and throw me into the Dongyang Ocean." Recalling his conflict with his father in a lifetime, he agreed immediately since he should no longer hurt his father by denying his final requirement. After *Baogong* died, Biemo really followed his testament to make a big and thick stone coffin and buried his father into the Dongyang Ocean. Over years, people looked forward to *Baogong*'s reincarnation, but how long it would take the water to break the big and thick stone coffin! People living on the edge of the sea longed for *Baogong*'s reincarnation even more. They sought the coffin every day, every month and every generation without success. Once, a relative of the corrupt official discovered the hiding place of the coffin and told the corrupt official. Afraid of being punished by *Baogong*, he secretly transported the stone coffin into the deeper seabed. It had to wait for the breaking of the stone coffin by the water before *Baogong*'s reincarnation" (This story is collected by Wu Dashan, Zhang 1989: 374).

and those of villagers. The elite among village cadres played the role of agent while the community became an extension of the state. Though such a conclusion is supported by fieldwork evidence, it has pointed out only one side of the direct interference of the state power presented by the grassroots village leaders to the civil society.

Helen Siu focused on the operation of state power at the township level, but she ignored the double-face role of village cadres at the village level, which means they are both the most basic agents of the state power and native villagers themselves. The legitimacy of being agent was also derived from the approval of villagers, otherwise they could not operate the state's power in the village. And the approval of this legitimacy was obtained from the actual benefit brought to the villagers. Thus, as agents of the state power, village cadres had the authority to control villagers' behavior on one hand. On the other hand, they must keep a mutual beneficial relationship with villagers so as to achieve the authoritative position in the hearts of villagers.

The role as intermediate agent was actually closely linked with the monitoring of ideological remolding imposed by the state power before 1983 and that of economic growth after 1983. As village cadres, the agents of state power at the village level, often said, the performance of a cadre depended on the tax revenue and food production. With the growth of these two figures, the higher authority would be happy and cadres would have a great performance in their official career. Otherwise, they would be criticized. The state hoped that village cadres could collect more taxes while the villagers wanted the cadres to bring them benefits or do something practical. A village cadre told me: "It is not easy to be a cadre in the village because I have to complete the task assigned by the higher authority to keep my position while I am a native villager so that I cannot leave folks alone when they turn to me. Otherwise, I will end up with a bad reputation of 'no righteousness'. After I leave the office, no one will talk to me."[11]

Therefore, in order to avoid offending the superior state power and convince the villagers of their willingness to serve the people, village cadres had to collect all the taxes on one hand and on the other hand get some kind of favor to benefit the people from the state power,[12] so that their authority status in the village would be established. At the same time, once the authority had been established, operations of the state power including collecting taxes would be smooth. This is a kind of exchange relationship between agents of the state power and villagers generated by the mutually beneficial relationship. It can be said that cadres were the "lubricant" for the relationship between the state and the villagers.

[11]It is selected from an interview record with a village cadre on August 12th, 1997.

[12]There is a basic premise that the benefits obtained by the village cadres should be returned to the villagers. This actually ignores the possible deductions from the benefits obtained from the state by the village cadres before paying back to the villagers. That is the agent fee he obtains in the transaction between the state and the individual. This problem is more complicated without much relation with my following discussion, so I would like to put it aside temporarily with no further discussion.

The benefits given to the villagers by the cadres can be demonstrated by the specific cases of disputes solving. In Li Village, the cadres once "pleaded for the people". In the winter of 1991, there was a young man named Li Qiangwei in the village. One day, his wife was on the way to Li Village when she was harassed by two rogues. They followed Li Qiangwei's wife saying some obscenities. At the door of Li Qiangwei's, one of the rogues pulled down his wife's bike and grabbed her for harassment. Li Qiangwei's wife was terrified, shouting loudly for help. Li Qiangwei ran out quickly and fought with the rogues. Since the rogue was drunk, he didn't keep his feet and his head hit on the ground. After sent to the hospital, he died despite all treatments. Li Qiangwei immediately went to the police and confessed and then was detained by the public security bureau. After this dispute occurred, the village cadres gathered all villagers for a signature letter. On behalf of all villagers, they wrote a "Warranty by Ten Thousand People", sending it to the public security, public prosecutor and court at the county level. It was hoped that "though he did commit a crime, it was accidental and caused by objective circumstances. Concerning the offender's general behavior, his attitude after the crime and the worsening situation of his family",[13] villagers requested that Li Qiangwei could serve the sentence on probation.

When the court was going to put his case on trial, villagers wrote a carefully worded "villagers' petition". The petition was a convincing support for alleviating his penalty. We translate the "petition" in full text here:

> Leaders of public security, public prosecutor and court of Zhaoxian County:
>
> All villagers of Li Village, Fanzhuang Town in Zhaoxian County are shocked by hearing that Li Qiangwei will be sentenced as guilty. They went to the Village Committee one after another, complaining and calling for redress the issue in the public security, public prosecutor and court of the country. Li Qiangwei should be acquitted of charge. In order to avoid interference in working order of the relevant authorities caused by villagers' petition as well to respect the democratic will of the people, we hereby express our petition:
>
> I. Introduction of Li Qiangwei and his families
>
> Li Qiangwei went to school from childhood. Being disciplined, he always cooperated with classmates, respected teachers, studied hard and was elected as merit student every year. After his graduation and entering the society, he loves to work. He is diligent and thrifty in running the household and moderate in temper. He always obeys law and discipline while he never argues or fights with others. He is a simple and honest youth.
> His parents are good villagers, honest and kind-hearted, upright in daily behavior, industrious and diligence.
>
> II. Details of the incident: (Omitted)
> III. Analysis of the fact:
>
> 1. Though it is a serious case related to human life, it is the dead that caused this incident without old hatred, which means Li Qiangwei is out of justice impulse.
> 2. Li Qiangwei fought with them bare-handed and pushed them on the ground which caused death. It proves that Li Qiangwei didn't intend to kill them but only give them a lesson and save his wife. The disastrous result is an accident.

[13]It is selected from the "Warranty by Ten Thousand People" stored by the village secretary.

3. The social order is currently in a mess and people hate those rogues. Anyone with a sense of justice will give them a lesson, which means his behavior is justified.

Therefore, Li Qiangwei is innocent, so he should be declared not guilty. Otherwise, it will be an unjust case.

In a conclusion, we believe that though the fight between Li Qiangwei and rogues caused the death, he was helping others for justice. Therefore, he should at least not be punished. If he is punished, who dares to fight for others in case of meeting bad guys and things? (If anyone accidentally hurts or kills somebody and is punished, who will help others in case of an emergency? People may just walk away instead of offering helps.) This will certainly contribute to the spread of bad things in our society and do harm to the social order managed by people.

Li Qiangwei is innocent, and everyone wishes for his release. It is hoped that leaders at all levels and all judges will conduct a serious investigation, respect the fact, make a clear distinction between right and wrong and reach an unbiased judgment.

It is hoped that clever judges will give an impartial and fair judgment and will not falsely misjudge a good man.

Village Committee of Li Village, Fanzhuang Town of Zhaoxian County

Villagers of Li Village, Fanzhuang Town of Zhaoxian County

January 1992

This is an event in which rural elites organized villagers to fight for the exemption rights for a person who otherwise may face the punishment by national laws. They tried to bargain with the state laws from the perspective of local customs, hoping that the state could make concessions on this issue. In the settlement process of this dispute, the state finally gave in, and Li Qiangwei was released.[14] When the village cadres made evaluation of such a judgment, they valued the prestige they got from such a result, which would facilitate their work in the future. It also gave them a symbolic power, which was not reflected in their clothing or size of their house, but in the villagers' memory of the events related to the prestige. The memory of event results became the most powerful resource for village cadres to control villagers' behavior. Village secretary told me: "Ever since the pleading and tree distribution, works for family planning or tax collection are much easier than before. When faced with such difficulty as collecting forest taxes, village cadres will make announcement through the loudspeaker. 'The state has solved our difficulties and improved our life. Now there are difficulties encountered by the state, we have to show our consideration and pay the tax as soon as possible.' After the announcement for a few times, all the taxes can be collected."[15]

The power of village government is also used in the mediation of civil disputes. When a case occurs in the village, what comes to the villagers' mind first is to settle it privately. Village cadres then often act as mediator to settle such disputes privately. In rural area, the main task for a mediator is to persuade the villagers

[14]This is what the village secretary told me, but the court archives recorded the sentence of three years imprisonment to Li Qiangwei. But in villagers' opinion, it was considered a light sentence.

[15]It is selected from an interview record on August 15th, 1997 with a village secretary.

concerned to sit together and sign a verbal or written settlement agreement in accordance with the village customs. After the signature, the mediator would be responsible for supervising both parties to fulfill the obligations accordingly. Finally, they would sit together for a meal so that the case is successfully mediated. Of course, sometimes the mediation fails, so villagers have to appeal to the court and seek legal solution.

In the autumn of 1994, there was an incident in Li Village. The villager Li Jingbao found a few migrant workers from Guan County of Shandong Province to do welding at his refrigeration house. One day, a migrant worker suddenly had convulsion and fainted within half an hour. He was sent to the town hospital and died there. Later the cause of his death was identified as a heart attack. The worker was called Zhou Yitian. Li Jingbao immediately telegraphed to Guan County and asked his family to come. The next day, Zhou Yitian's elder brother came and insisted that his younger brother got an electric shock when was working. When the two sides kept arguing over the cause of death, the village secretary involved in the mediation took the elder brother aside and said to him: "If he died of an electric shock, there should be signs of breakdown on his feet. But there is no trace of electric shock on your brother's feet. If you go to the court, you may not win. I think it is better to seek reconciliation. Since your brother is dead, you'd better end with compensation!" After a few times of mediation, the two sides finally sat down and achieved an agreement to compensate the deceased with the village secretary as mediator. The agreement indicated that Li Jingbao had to pay 11,000 yuan to the brother of the deceased as the funeral expenses while the brother of the deceased had no suspect for the cause of death and admitted that it was due to a heart attack. Through this agreement, a case involving life which might be presented in the court was subsided through the mediation of the village cadre.

8.4 Definition of Mode

As sociologists argue, with the gradual implementation of the rural reform of the state, the hierarchical structure of the countryside has gradually changed (Lu et al. 1992). Of course, people in Li Village often talk about the change of hierarchical structure under the historical background of power changes in villages.

In the memories of Li villagers, it was the wealthy family in charge of village affairs before the liberation. However, after the liberation, especially after the Land Reform, poor people became in charge of the village government. Now, according to the villagers, though the descendants of the originally poor people are in power, they are less well-off economically than those of the relatively wealthy family in the past, which I have mentioned in Chap. 2. In Li Village, Group A and Group B are separate in economy and politics. In their separation, there is also cooperation. For example, a village cadre belonging to Group B told me that the village relied on these wealthy families to pay forest product tax to the state this year. If village cadres went to their homes to explain the situation, they would pay the tax in

accordance with time and quantity no matter how much they had to pay. Of course, after this, when they encountered any trouble in business, village cadres of Group B in charge of the village affairs would come forward to help them.

In the village, everyone is generally classified according to his status. This "status" refers to the power he possesses. Li villagers can be roughly divided into the following ranks according to their power: (1) the village cadres and Party members; (2) villagers with immediate family members as officer outside the village; (3) business owners or rich business villagers; (4) general villagers.

Village cadres have the greatest power in the village, so they have a higher status. They seldom engage in agricultural labor so that they can spend more time on village affairs. Though ordinary Party members do not have direct executive power, they can communicate with the Village Party Branch cadres due to their Party membership. People in the second rank usually use their outside relationship to bargain with the village cadres on the distribution of benefits. People in the third rank gain their power mainly through their influence on the economy. When village cadres are in face of economic difficulties, these people are often turned to for money. People in the lowest rank are general villagers without the advantage of the above resources. They call themselves "dutiful peasants" while others call them "humble men". In short, they are engaged in agricultural work all day long without doing other things.

Power ranking classified as above refers to the power conferred by the state power in general. Thus, this division is actually external to the local life. The state power is often very "powerful" as well as deterrent, but it is dissociated from the lives of the locals, which is implemented by the institutionalized state ideology. Civil power is often manifested in the form of civil authority, which is more of a power inherited from the customs and a practice blending into the locals' life. Therefore, it is often implemented by a non-institutionalized form.

However, it should be noted that after the state power penetrated into the civil society, the institutionalized authority and the non-institutionalized one actually coexist simultaneously. In a detailed analysis of drawing lots in Shaanxi Heilongtan by Luo (1997), the social facts (p. 379) that "the authority in the state power system and that in the folk culture placed in the same context to examine" was shown. In the description of power pattern changes in Li Village in the previous chapter, it can be seen very clearly.

German sociologist Weber had distinguished three types of authority, the authority with a sacred meaning of "charismatic authority", the "traditional authority" and the "legal-rational authority" (Weber 1978: 121–299). From that point, Wang Mingming criticized this classification system with the field materials of Shiding Village in Taiwan. According to him, the inadequacy of Weber's classification system lay in the ignorance of the mixed and indivisible nature of the three authorities in real life; what's more, when Weber stressed the evolution of society, he ignored the existence and the important role of the "unofficial civil authority" in informal occasions (Wang 1997: 260).

Wolf had also classified the power dominance relation in rural area, which in fact was more or less the same as Weber's division. It seemed to Wolf that four kinds of

power affected the dominance relation in rural area, "hereditary domination", "salary-style domination" and "commercial domination", which were relatively common dominance relations. The fourth dominance relationship was the "administrative domination" occurring in socialist countries like the former Soviet Union and China (1966: 50–57).

Hereditary domination generally refers to the hereditary inheritance of property under the feudal hierarchy. Salary domination means that state officials are offered a certain salary by the state in exchange for services. Such salary can include two types: rent from peasants for land leasing and salaries from keeping part of the tax of the state, which can be subdivided into taxes collected by officials and deducted a percentage as commission of the state; or taxes collected by the state and then deducted a part as salaries of officials. Commercial domination often refers to a commodity trading relationship with each other. It seems to Wolf that the so-called administrative domination didn't appear until the 20th century, which is similar to but different from salary domination. Their similarity lies in the property ownership of nationalism while their difference is that salary domination mainly collects taxes while administrative domination also involves the power to manage actual agricultural production.

Although Wolf's classification of rural social power dominance relation is comprehensive, it still classifies the power pattern in worldwide village with single dimension and in hierarchy. But the real power domination is more likely to co-exist in a society in many forms. Therefore, when referring to the above classifications of rural authority by many scholars and taking into account the problem analysis during solving disputes in rural area, from the institutionalized and non-institutionalized dimensions, I would like to classify the authority in Li Village as the "institutionalized authority" and the "non-institutionalized authority". Each of them can be divided into two small categories according to their actual functions. For example, the institutionalized authority includes the authority of government and that of the village and township courts; the non-institutionalized authority can be divided into village temple authority and civil authority.

The two kinds of institutionalized civil authority, i.e. the authority of village government and the authority of court, are among the hierarchical authority of Weber; the non-institutionalized authority of village temple is similar to Weber's Charisma authority, which owns a sacred legitimacy, but it is outside the state system. In addition, the civil authority in the non-institutionalized authority refers to the authority of unofficial authority figures. Sometimes the two non-institutionalized authorities may fall on one person at the same time (Table 8.1).

In Li Village, when disputes occurred, four different authorities would turn into the role as a third-party mediator involved in disputes resolution in the past. People

Table 8.1 Authority pluralism in village community

Institutionalized authority		Non-institutionalized authority	
Authority of village government	Authority of court	Authority of village temple	Civil authority

resorted to these four authorities with a certain order. Civil authority came first because in the eyes of villagers, civil authority referred to people "capable of reasoning". Their participation in the dispute could help the problem to be solved quickly. For example, in the event of family separation dispute, the first person to mediate was not their own relatives, but the person who was good at reasoning[16] and also had a good relation with the family.

In addition, the village patriarchs also played the role as mediator in family disputes. However, due to the weak and declining power of family in this village, the authority of the family patriarch lay in persuading without any adjudication effectiveness.[17] For example, if a couple had a quarrel, the patriarch could try to persuade them to "consider things in the long run" or "stop quarrel for his sake". Once the dispute was not solved by civil authority like patriarch, the government would come forward for mediation. There was a Village Mediation Committee and its director was often the village head with some civil authority figures as its members. The Committee was responsible for civil disputes mediation occurred in the village so that the two sides could reach a certain oral and written agreement. Compared to the civil authority, the Committee was more effective in mediating general disputes, because in the eyes of villagers, the village government was a resolution authority more legitimate than the civil authority.

However, it seemed to the villagers that the court authority set up in the township level by the county court was the most authoritative in disputes resolution. Due to economic considerations, court would be their last choice if civil authority and the village government failed.[18] Of course, many cases turned to the authority of the court directly without trying the mediation of the two previous institutions. Villagers considered the court as the most formal resolution authority of civil

[16]In the words of Li Villagers, it is called "butter-tonsiled person".

[17]This is in dramatic contrast to the authority of conflict arbitration obtained by the patriarch of the village in "Yixu" of Fujian in 1930s described by Lin Yaohua. Disputes in Yixu Village of Fujian in 1930s were settled through such a process: "The ancestral temple is the highest judicial organ of clan village. Villagers can gather the household head for public discussion and judgment in case of disputes… Disputes are mediated by a parent or household head initially. If they fail, it comes to the branch head or branch temple. If it is refused again, the appeal will be passed to the ancestral temple. The ancestral temple is the Supreme Court of a clan, so it should use its arbitration capacity. Small cases are settled by reprimand and consolation while big issues will be settled in written form after mediation. Anyone dissatisfied with the judgment by the ancestral temple has to complain to the feudal official, but all members in the clan consider lawsuit as a shameful thing" (Lin 1935: 59–60).

[18]The questionnaire results of Hu and Hu (1996) in Duanjia Village of Hanchuan County in Hubei Province showed that no one had solved a dispute through court (Hu Biliang, Hu Shunyan, 1996, "Table 9.4 Ways Villagers Used to Settle Disputes", p. 207). This result, in fact, doesn't fit into the most basic common sense, because quarrels between husband and wife may be not solved in the court but the divorce disputes should be. Therefore, the survey statistics of Duanjia Village showing that no family dispute was solved by the judicial department is of little practical significance.

disputes. The first principle of the court to resolve disputes was mediation.[19] Because the court believed that conflicts could be resolved through it. If the two sides couldn't reach an agreement after several conciliations, the court would have to judge the responsibilities and obligations of both parties. The result would be sent to the plaintiff and the defendants in written judgment. If either of the parties was not satisfied with the result of the judgment and thought it was not fair, it could lodge an appeal to the municipal court within 15 days after the issuance of the verdict but the verdict of the municipal level would be the final verdict.

Although the court's decision was authoritative, villagers lost their basic trust in the authority because of the penetration of human feeling and network of relationship in the trial. The villagers generally believed that "without money and relationship, it was impossible to win a lawsuit". A villager told me that there were several people famous for lawsuit in each village who could help you win as long as they were satisfied with a good price, because these people were either relatives or acquaintances to the court officials. According to the villagers, as long as the "gift" was delivered, the "reason" became less important. When the villagers engaged in a lawsuit, they turned to these "folk lawyers" without lawyer's license instead of regular lawyers, because the villagers believed that the former were more useful than the licensed ones.

In the village, people who had complaints but failed to win in the lawsuit often resorted to the authority of the village temple. In the previous chapters, village temples were centered around a folk temple named Zhangye Temple. The stories of *Zhangye* were often spread in the village. Therefore, Zhangye Temple enjoyed a booming pilgrimage. On the first day and the fifteenth day of each lunar month, people came in an endless stream. The village temple fair on October 15th on lunar calendar was the busiest time of the year, which was the birthday of the God of the temple. The authority figures presiding over the daily affairs in the temple would shoulder this responsibility often, who had been through some kinds of mystical experience. Xiaowa who was in charge of incense issues said that he was entrusted by the God to participate in the management of village temple activities. Among pilgrims, in addition to those praying for getting rid of diseases, there were villagers who came to tell the God their own grievances. They would know the judgment of God by observing the incense. In this case, they estimated whether their grievances could be resolved. In other case, they wished for the God's divine help by making a vow or offering some sacrifice. One woman told me that *Zhangye* dealt with injustice in the world. Her son was often bullied and beaten by the teacher last year in school and there hadn't been any changes after she talked with the teacher several times. Then she sought help from the God and her wishes came true because the teacher then rarely took her anger out on children.

It should be noted that regardless of the title of the revival of folk religion, one thing is very clear: after the full trust in the single national institutionalized authority, people started to look for new authorities. The establishment of this new

[19]As a local court presiding judge told me, almost 90% of civil disputes were resolved by the court mediation every year. Especially for divorce cases, the court mediation was a necessary procedure. Because in the court's opinion, it could maintain family stability, thus social stability would be also kept.

authority was realized by looking for an agent to speak for it. The folk religious belief system was widely recognized because it was closer to villagers' lives than the institutionalized authority. It was a common social psychological tendency in current rural areas that more people were willing to ask help from the God in face of risks and uncertainties of life in order to release their dissatisfaction with social injustice. This practice eased the tension between the state and civil society in a certain sense because folk beliefs within arm's reach provided a safe haven for them so that personal anxieties caused by social risks and uncertainties were likely to get relieved.

It should be further emphasized that the maintenance of an orderly society relied on the responsibility and restraint mechanism named "reciprocity" by Malinowski (1926), which could be considered as the normal state of society. Once the abnormal state of a society appeared such as disputes, the parties concerned would resort to the third-party authority to have the dispute resolved (Bohannan 1967; Roberts 1994) and resume the normal and order state of the society. This kind of authority or several types of authority are recognized by both parties concerned. Several authority systems coexist in China's rural society. In other words, disputes can be settled by means of different authorities. During the settlement of disputes, a variety of authorities can be interwoven in the same field and influence each other. In the following section, I will use my field data to demonstrate that the way to solve disputes in different authority fields including civil society, court, village government and village temple. We will see the contradictions and integration process of country's understanding of the law and civil customs.

8.5 Game of Competition

Huang (1993, 1994a, b) and Zhiping (1996a, b) carried out in-depth studies on the relationship between customary law and state law based on the analysis of relationship between the state and society. According to Huang's research, there was an intermediate state between national laws and the informal mediation of customary laws, which he called the "third realm". Through a careful analysis and comparison of the legal archives of Qing Dynasty and those of the Republic of China, Huang concluded that when a dispute hadn't been resolved through the court, the community dispute mediators and relatives would come to mediate the dispute. However, only when a final verdict was required in the court, would the judge make a decision of "right" and "wrong" of the two parties in accordance with the provisions of the state law. The mediation process from the initial court of appeal to the final judgment was what he called the "third realm" (1993: 272–273).

In Liang Zhiping's study (1996b), Liang argued that the ternary mode of "national/the third realm/society" that Philip Huang proposed didn't actually go far beyond the binary mode of "state/society". Instead, it only repeated Habermas's interpretation for "public sphere". Therefore, although Philip Huang's explanation of the system stressed extremely the antagonistic relation between the reconciliation

and compromise in the civil society and the impartial judgment of the state, a "third realm" between them was not able to emerge because the so-called "intermediate stage" between the two should also be a part of the formal national laws (Liang 1996b: 44–47). Moreover, in Liang's opinion, the so-called "reconciliation instead of lawsuit" was the principle to settle disputes recognized not only by the civil society but also the state. As a result, Liang thought that the so-called civil society in China was neither entirely subject to the state nor completely independent of the state, but "a continuum with the state system bounded by the common concept of order" (Liang 1996b: 52).

In fact, according to my survey data, it is my overall impression that in the process of disputes mediation in the court, the judge indeed tries to resolve the disputes by investigating and affixing the legal liability in accordance with the legal principles. The parties concerned will find many reasons complied with national laws to exculpate themselves. Then the legal principle of the state will become a common resource to compete for.

Therefore, once the dispute comes to the court field, everyone will try to abide by the court's rules and fight over who is more "compliant of national law" so as to get the dispute resolved in favor of his own party. It is when everyone makes use of his own resourcefulness to compete with his opponent in the court field. It is only before the final judgment when everyone makes mutual concessions to bring the dispute to a real solution. In consequence, the final court decision to solve the dispute may not be a judgment between the "right" and the "wrong" entirely in accordance with the law but a written expression of certain concession made by both parties after the mediation of the court.

There was once a dispute in Li Village. Yu Baorui as the plaintiff lodged an appeal to the court to sue Li Xiaozhu for property appropriation. The details are as follows:

> In March 1989 (lunar calendar), the plaintiff engaged in carpentry in the defendant's house. In the afternoon of March 25th, the plaintiff Yu Baorui, accidentally cut three of his fingers on his right hand during working, resulting in the failure of further work for the defendant. After treatment, the plaintiff Yu Baorui proposed to leave. After the consultation, the defendant sent the plaintiff home by his tractor and the plaintiff had to pay the traffic fee to the defendant. Thus, the plaintiff used his wage 40 yuan which should have been paid by the defendant as the traffic fee. The plaintiff also paid another 35 yuan for the medical bandage. On the way to plaintiff's home, when they arrived in Da'an Village, the defendant's car crashed into one of the County Committee member of Zhao County. The defendant's car was detained in the supervision station while the plaintiff was sent home by the County Committee memeber. During this period, the plaintiff and the defendant had no contact. However, when the plaintiff went back to get his woodworking tools at the defendant's house on July 8th (June 6th in the lunar calendar), the defendant detained his stuff, a new Feige bicycle and a full set of woodworking tools, because he thought the plaintiff should bear the responsibilities. The plaintiff had several negotiations with the defendant, which ended in failure.
>
> The plaintiff considered that they had a rental relationship with the defendant. The obligation of the plaintiff was to pay the defendant the traffic fee in accordance with their agreement while the defendant's obligation was to send the plaintiff to the destination successfully and safely. The defendant had a traffic accident out of his own reason which

didn't have any relationship with the plaintiff. When the traffic supervision department dealt with the accident, the plaintiff was not involved. The plaintiff didn't get his wage and took that as the traffic fee but the defendant didn't send the plaintiff to the destination according to the agreement. Therefore, he should return the money, but the defendant forcibly detained the plaintiff's property without any reason and he resulted in a property appropriation. According to the Article 75-2 of the General Rules of Civil Law: The lawful property of citizens is protected by law while any illegal closing down, detention, freezing and confiscation by any unit or individual is prohibited. Since the defendant's conduct has violated the relevant regulations, we would like to file a lawsuit and our requests are: 1) The defendant should be ordered to return our vehicle and tools immediately; 2) A compensation for the loss during the detention of 10 yuan a day (10 yuan per person per day for three people) should be paid.

Yours sincerely,

The People's Court of Zhao County

Plaintiff: Yu Baorui, Wu Zhanbin

July 10th, 1989

In this petition, we see that the dispute was caused by the detention of the plaintiff's property by the defendant. From the plaintiff's point of view, they turned to the court after their several negotiations failed. Once they got to a place like the court, the plaintiff would decorate their statements in accordance with the rules of the court. Because at the court, "facts" should be the basis and the judgment will be made according to the "provisions of the law". Clearly, the plaintiff found supports for their actions from the regulations of the civil statute book and they repeatedly stressed that they were not responsible for the accident on the way to their home. In addition, it is reasonable for them to pay their traffic fee from their wage. So they thought they were innocent and should be compensated by the defendant. We need to check how the defendant responded to the plaintiff at the court. Firstly, on behalf of the defendant Li Xiaozhu, his uncle Li Qingren proposed a piece of reply to complaint:

Statement to Complaint

Respondent: Li Qingren, male, 64 years old, is from Li Village. I am the head of the house and Li Xiaozhu is my nephew. I am responsible for the whole family.

Reasons proposed by Yu Baorui are not true. Yu Baorui sues my nephew Li Xiaozhu on purpose. They bully him because he is young and not talkative, for which they want to distort the facts to achieve secret goal. Now I would like to give the following responses:

In the afternoon of March 24th, 1989, I asked my nephew Li Xiaozhu to look for Yu Baorui for carpentry. In the afternoon of the 25th, Yu Baorui accidentally cut three of his fingers on the right hand, so I immediately asked two nephews (Li Zengjiang and Li Xiaozhu) to send him to the hospital for treatment as well as paid 35 yuan for his medical expenses. After coming back from the hospital, he insisted to go home, saying that he couldn't do the carpentry. I said it was already dark while the small tractor had no license or any certificate and suggested him to take a bus to home the next day. Yu Baorui cried and said that he had to be sent home that night and he would be fully responsible for no matter what happened on the road. He also said that when we sent him home, he would fuel our car. The person presented namely Liu Si and Hao Yanmin can prove this. We felt sympathy for him when hearing this so I let my nephew Li Zengjiang drive Yu Baorui and worker Zhan Bin home

accompanied by Li Xiaozhu. Upon leaving, I explained to Yu Baorui that he should be responsible for all that would happen on his way back home and he agreed to shoulder the full responsibility. On his way home, we arrived in Da'an Village when our car ran into one of the county Party Committee member. It is not sure who to blame. When the driver of the county Party Committee member saw Yu Baorui's injured hand, he detained our tractor and sent Yu Baorui home by car.

After the accident, Yu Baorui didn't fulfill his promise, but made a false countercharge, saying that they rented our car to go home, which was really a deceptive talk out of nothing.

After our car was detained, it was the time for spraying insecticide for pear trees and harvesting wheat, so we needed tractors. We ran to Zhao County dozens of times and Shijiazhuang several times at the cost of 700 yuan of car fare and meal expenses. How can we afford 10 yuan per day for the tractor storage fee in ZhaoCounty? Helpless, we spent 1,600 yuan in cash to get the tractor back and waited for further discussion with Yu Baorui.

For the first time (he) came to my house and said he had no money, he would pay me back after getting money from carpentry and I said no. Then I let Li Xiaozhu inform the production team. Wu Junhua, cadre of the production team, said that if they did not pay for the cost, we should take their stuff as collateral until they paid back the money.

At the second time to my house, he personally told (talked with) me that he would borrow 600 yuan anyway and asked me to give him back his property while I said no even he could give me 1,000 yuan. At that time, Wu Lizhi was there can prove that.

I was ready to seek for a lawsuit after a few days if he still refused to pay back the money. We had never thought that he would sue his victims, us. He sued us out of nothing. He was lying with irrational sophistry.

In our opinion, Yu Baorui should be responsible for the total cost of 2300 yuan we lost.

It is hoped that the court can give a fair judgment based on the facts in accordance with the law.

Respondent: Li Qingren

July 28th, 1989

In this statement, we see that in the field of court authority, the general principles of the state and the civil common law were utilized by both the plaintiff and the defendant as the basis of innocent to the court. The defendant said that he was sorry for the poor plaintiff for having cut his finger and asked his two nephews to send him back by tractor. However, since the tractor had no license, it could not be driven out with incomplete procedure. Then they made a verbal agreement with the plaintiff that the plaintiff should be responsible for anything happened. But laws care about evidence; the verbal agreement was made when there were two witnesses.

Moreover, it wasn't the idea of the defendant to detain the property of the plaintiff. The solution was proposed by the village cadre after consultation. Thus, it wasn't the responsibility of the defendant but that of the village cadre to detain the property of the plaintiff. Then, the court had to examine the evidence by the court inquiry, which was also a dispute resolution process with varieties of channels. For the above dispute, the court had conducted a total of 11 times of inquiry. From the dialogue between the court and the two parties, we can see that in over four months' court mediation, the law, as a representative of the state authority had worked

together with folk customs. The court conducted the first inquiry on July 25th and the object was the uncle of the defendant. The judge's purpose was to examine the basic situation of the defendant and facts of his injury and working in defendant's home. For the second inquiry, the judge talked with the plaintiff Yu Baorui from which we can see that the judge questioned him to figure out some basic facts, such as the wage, the plaintiff's position during the car accident and their oral agreement when the defendant sent the plaintiff home. On the same day, the court had a conversation with the two plaintiffs namely Yu Baorui and Hou Zhanbin to examine all the facts, which was the third court inquiry. In the conversation above, in order to check whether the oral agreement to send the plaintiff home by the defendant due to his hand injury was true with the witness Zhang Junbiao, who worked with the plaintiff. The court questioned Zhang Junbiao again on August 5th, which was the 4th court inquiry of the case. For the 5th court inquiry, the court questioned the defendants Li Xiaozhu and Li Zengjiang. From the court record, it was the purpose of the inquiry to examine the facts from the accused. On September 17th, the court began the 6th inquiry, asking the accused Li Xiaozhu about the detention of the plaintiff's property without permission. The 7th inquiry was like a verdict, and the court returned the woodworking tools to the plaintiff provisionally which were handed over by the defendant. But this wasn't the final judgment and the conversations between the judge and the plaintiff Yu Baorui were as follows:

The 8th court inquiry was to check the facts from Li Xiaozhu, which is common in the court inquiry today and worth quoting:

Judge: Who raised the requirement to send Yu Baorui back?
Defendant: Yu Baorui himself.
Judge: After the accident, have you discussed the way to handle it?
Defendant: No.
Judge: Have you negotiated with each other?
Defendant: No.
Judge: Do you think it is right to detain other's property? Why did you do that?
Defendant: I asked them to leave their property as guaranty and go back to get the money. I don't think I should detain other's property.
Judge: How much do you want by doing this?
Defendant: We wanted 1,100 yuan, half of the fees.
Judge: Did they agree?
Defendant: Yes. Yu Baorui said he would go back for collecting money and Yanmin and Xiaoliang heard that.
Judge: Where were their woodworking tools and bikes?
Defendant: At Li Qingren's house. He is my uncle.
Judge: What property of the plaintiff is left in your house?
Defendant: A Feige bike, an electric plane (without motor), uncertain number of saws, maybe five to six ones, a cutter, uncertain number of planes and a carpenter's toolbox (it is still locked).

Judge: We can ask the plaintiff to give you certain amount of compensation. Can you give them back their property?
Defendant: I have to go back and discuss with my uncle

In the above conversation, the defendant said that this dispute hadn't been resolved privately, which is obviously different from the statement that plaintiff stressed on. It is possible that they did have some contacts, but it was far from the resolution. In the dialogue, we also see that the judge didn't directly determine the right and wrong but asked the defendant himself to tell whether it was right to detain others' property by which the judge hoped the defendant to recognize his moral responsibility through his own self-examination. Finally, the judge negotiated with the defendant by means of compensation, where we see the judge entered into negotiation with the defendant as the representative of the plaintiff and to start the mediation of this dispute. The following is the 9th court inquiry between the judge and the plaintiff Yu Baorui.

Here, the plaintiff denied that he had promised to be responsible for what might happen on the way home, which is inconsistent with the emphasis made by the defendant. This inconsistency cannot be confirmed with evidence. On the other hand, the court was also seeking ways to mediate the dispute by asking the plaintiff to make concessions, in which the judge asked the plaintiff to bear part of the responsibilities and make part of the compensation for the loss of the defendant while the plaintiff insisted on standing his ground. After almost half of a month, the court conducted mediation with the plaintiff Yu Baorui again, which was the 10th court inquiry.

The last court conversation was a trial present by the plaintiff and the defendant, but there was no sign of mediation between them. The plaintiff insisted that he was free of responsibility for the car accident, so the loss caused by the detention of his tools should be paid by the defendant. However, the defendant considered the plaintiff unreasonable because in his opinion, he pitied the plaintiff, so he sent him home and that was the reason why the plaintiff should be responsible for part of the loss. The two sides stood their ground.

When the facts of a lawsuit are clear but without solution after several mediations, the court would make a decision according to different opinions of the judges. This judgment won't be entirely in accordance with the laws and regulations but based on the fundamental principles of laws and regulations. It should also take customary practices into account, which have a very important principle that the two sides should share the loss and benefit equally. Therefore, it is a compensatory principle, making compensation for lost by taking part of the beneficial, which can be considered as a principle of reciprocity fulfilled by the parties under the force of the court authority.

For this dispute, after 11 court inquiries, all judges involved in the case began to discuss the final verdict on the case. From the archive materials I gathered, such discussions had been conducted in three times. For the first time, there were two different views: one was that it was wrong for the defendant to detain the plaintiff's

tools, so the defendant should be responsible for the loss; the other one was the plaintiff should be partly responsible for the defendant's loss because the plaintiff benefited from the car crash. They reached more or less an agreement in the second discussion: Yu Baorui as a beneficiary should compensate for the loss of the defendant while it was wrong for the defendant to detain the plaintiff's tools which also caused loss. So both parties should bear the loss respectively. In the third discussion, two opinions appeared: One considered that the plaintiff and the defendant should pay for their own loss instead of compensating for the other's; the other thought was that though the defendant was responsible for the accident, the plaintiff as the beneficiary could compensate for part of the loss of the defendant. Taking these two opinions into account, the court finally decided: both sides should be responsible for their own loss while the 50-yuan litigation costs were shouldered evenly by the plaintiff Yu Baorui and the defendant Li Xiaozhu. And the case was closed.

From the detailed description of the dispute solution, we can see that once the dispute is related to the court field, state laws and folk customs will be treated as a resource for self-protection by all the parties involved. The court has held several conversations with the two parties for two reasons: fact-finding when the court tries to discover the truth and practise mediation between the two parties in accordance with the principle of compensation. Once the mediation couldn't be realized, the court would give the final judgment in accordance with the legal provisions and customary practices, so the mutually beneficial relationship could be restored while the law becomes a coercive power to resume this relationship (Zhao 1999a, b, c, d).

In this case, we can see that the "the third realm" called by Huang (1993) and the continuum of "state and society" defined by Liang (1996b) are probably not applicable. Actually, the likely explanation should be that the court has its own rules of operation as a dispute resolution authority while its procedure is divided into three steps, namely fact-finding, court mediation and court verdict. Once the dispute is brought to the court, the solution of dispute will be incorporated into the above resolution process. However, although the operational procedures of the court are regulated by the procedure law of the state, the specific operation of each step is vastly different. Many of the court's judicial officers have told me that each case is unique, so the way to deal with each one is not the same. This "difference" specifically refers to various principles of communication between the court and the parties involved in the dispute resolution process. Now, the communication between formal court and informal private sector through the "rural protection" pointed out by Huang (1993) based on the records of Qing Dynasty has disappeared and it is replaced by the face to face communication between the parties involved and the judge. The view of "a continuum with the state system through the common concept of order" by Liang (1996b) can be transferred into the benefit distribution of a bargaining style when state laws and folk customary practices are in the same field during the court solution of disputes.

The parties involved want to minimize their liabilities while the court as a mediator tries to resume the compensatory principle of reciprocity. When mediation fails, people turn to the state legal authority, which means to resume the principle of

reciprocity compulsorily through court judgment. Therefore, the court resolution of the dispute should not be "the third realm" independent of the state and society. Rather, it should be one of the pluralism of authority, which designates a field where we can find both the specification of state laws and the demonstration of folk custom practice.

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Chapter 9
Differential Mode of Justice

Ideology was no longer a weapon, but an end in itself.
Debord (1994: 73)

9.1 Field and Authority

In the discussion above, I have divided the authority to solve disputes in rural community into four types. Among the four types, there are the authority of village administration and the authority of court, which are both in the category of institutionalized authority. The other two types are civil authority and the authority of village folk temple, which fall under the dimension of non-institutionalized authority. Disputes in the rural community are usually resolved by one or several of these authorities.

It should be further emphasized that, in theory, each authority should have a corresponding field, which refers to a type of relationship under the power mode. In such a field, the core principles are defined by the corresponding authority, under which the core principles of other fields can also penetrate in and become informal operating rules of this field. Any dispute in a certain kind of authority field can be jointly solved by the formal and core principles as well as informal and affiliated ones.

Let's take a look at the dispute settlement in civil authority field, where the dominated core principle is reciprocity, and people form a relationship by differential modes of association. In this case, the mediator of dispute is often someone very close to the parties involved, who is called the "person able to communicate with the both sides" by Li villagers. Only by this kind of people, mediation will be accepted by the parties involved. In order to resolve the dispute, the mediator will generally not make a mandatory judgment, but try to persuade both sides to concede. Therefore, such a person is also known as someone "capable of reasoning", meaning that he is at least able to clearly show both parties the principles accepted by the civil society. Even a family patriarch will need comply with the conciliation principles instead of making hard judgments. If the dispute cannot be resolved in the civil authority field, it will be transferred to another field for solution.

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The village leader often serves for the Village Mediation Committee. If not, the village leader often takes charge of the mediation. Judging from the situation in Li Village, the Village Party Branch secretary was in fact the main decision-maker in the party and administrative affairs and thus responsible for disputes mediation. The core principle of mediation is to "avoid litigation", because from the perspective of administration, maintaining stability and good order of the village life is an important aspect in evaluating the achievement of village cadres by the superior authority. The Village Party Branch secretary in Li Village often said that as long as nothing happened, any method could be applied. Thus under the administration of the core principle to "avoid litigation", village cadres often use a variety of strategies to get the dispute settled.

In the village cadres' opinion, there are two mediation methods, the "reconciliation" and "mandatory" approach. The so-called "reconciliation" approach in fact means to convince one party to make concession so that the dispute can be resolved. This approach has the same goal with the persuasion of civil authority. But one thing is different. When the "reconciliation" approach fails, the cadre would use the state power to "force" the parties to accept a verdict made by the Village Committee. This often happens when the dispute has violated both the state law and rural practices. For example, in a dispute caused by refusing to support the old, cadres of the Village Mediation Commission would try to make both parties reconcile first, namely "reasoning and mediating". If it doesn't work, they would take coercive measures. For example, they would emphasize that it is against the law and they would turn to the court to force the party to fulfill the duty of support. Of course, these so-called coercive measures are used in limited situations while most disputes are solved in reconciliation.

In the eyes of villagers, the most legitimate authority to solve disputes is the court. Its core principle is "acting by law" which is used to solve disputes with core principles in other authority field. For example, the "reciprocally compensatory principle" in civil authority and the principle to "avoid litigation" or the reconciliation principle in village authority would also penetrate into the field of court authority and mediate disputes with the principle of "acting by law" to make judgment in accordance with the statute book.

In the field of village temple authority, the core principle is "complaining" through which the disputes get solved to a certain degree. Complaining often appears when the other three authorities fail to mediate the dispute or when people feel unfair after mediation or judgment. Complaining is a way to communicate with God. People express their grievances to God and hope that their enemies will be punished through God's power. As a result, in the field of village temple authority, the reflected power relationship is not only God's domination on people but also the need of pursuing social justice in the civil society.

Finally, it should be noted that in the text above, I described in detail the actual operation of different forms of authorities in village disputes. One aspect that hasn't been discussed in detail is the "symbolic power" of all kinds of authorities. The so-called symbolic power is an analytical concept first proposed and used by the French sociologist Pierre Bourdieu, for which he gave the following definition:

> Symbolic power—as a power of constituting the given through utterances, of making people see and believe, of confirming or transforming the vision of the world and, thereby, action on the world and thus the world itself, an almost magical power which enables one to obtain the equivalent of what is obtained through force (whether physical or economic), by virtue of the specific effect of mobilization… (Bourdieu 1991: 170)

In terms of national laws, many researchers have discovered that along with the political pursuit of the state's economic reform, the 1980s in China was a time when the national legal concepts were gradually penetrating into the grassroots society (Liang 1997, 1998; Su 1998). At the same time, the "policing" strength in rural area was enhanced (Loader 1997), which reflected the logic that social order could be maintained by strengthening public policing forces. Through the "mobilization" of discourse systems such as "law popularization", "spreading law to the countryside" and the "comprehensive treatment of social order", the government could stabilize the legitimacy of its administration.

In addition to the external impact of national ideology, we cannot neglect the individual emotional dependence on the policing system. In their opinion, the state policing system can construct a social order, which secures their "ontological security" (Giddens 1991). Thus, the country's "mobilization" and individual's need of "ontological security" entrust the state with a symbolic power. However, due to the power abuse of the administrative system operation, the individual's need of "ontological security" has transformed into fear and avoidance of the state administration. There is a folk proverb in Li Village, "ten large brimmed hats bully a broken straw hat". Here, although villagers recognize the administrative legitimacy of the symbolic power of the state as the "large brimmed hat", it is implied their rejection of such interference of symbolic power in their quiet life. A villager who opened a medical clinic in the village told me that government staff had came to him for money for more than ten times last year and they were not the same group of people. But they all used state tax as an excuse and threatened to turn to officials of town court and police power to force him to pay. If he quarreled with these people, they would charge him with interference with state affairs and imprison him at town. He said that when he recalled or saw those wearing a large brimmed hat, his legs would shake. Such public opinions reminded people from one side that the state administrative system should also be reformed in accordance to the economic reforms in village.

Let's do some historical comparison here. When investigating into the reality, the study of tax in the Ming Dynasty by Ray (1981) can give us an inspiration. In the Ming Dynasty of the 16th Century, although the emperor concentrated the state power in his hands, he had no ability to avoid his subordinate officials at different levels from exploiting the civil society. The low tax policy which was designed to unburden the people not only failed to help them out of poverty but also facilitated grassroots officials to increase additional taxes without limit. The consequence of such power system without responsibility management was insufficient state tax revenue, corruption of government officials, as well as a hard time for people to live (Huang 2001: 418–420).

We need to emphasize the current reality is that the peasants fear the state power's interference in their life on one hand and hope for a peaceful life through the implementation of such power on the other hand, such paradox reveals the conflict between freedom and order as well as the problem of the state reform.

In a word, in the rural society of China, legal provisions of state law, authority implementation of government, civil conventions and transcendental authority of village temple are all involved in the civil disputes mediation. In modern times, the construction of a new social order through so-called modern rule by law or legislation is probably an ideal plan that takes social development as social engineering (Zhao 2001). We can also say that this is one of the ways to construct such a new order. Other factors, such as government mediation organizations, civil conventions and social control of religion are indispensable in building this new order. For disputes solution only, court is only one way of mediation under the pluralism of authority, while there are other principles and approaches of disputes mediation which would overlap and absorb each other in other authority fields. Therefore, it can be asserted that disputes can only be solved with diverse authorities, state laws or civil conventions are only one side of the story.

Consequently, the thinking pattern of separating the customary law and the state law is faced with challenges as the state power has penetrated into rural area. There is not a pure customary law! The operation of the state law is not purely independent due to the penetration of civil customs. Disputes in rural area have provided a field for the ruling competition and mutual penetration of customary law and state law, which is also filled with ruling principles and competition between different authorities.

9.2 Non-litigation and Rites-Ruled Society

The above description about the authority functioning field in China's rural society is consistent with the previous conclusions made by the sociologists who studied Chinese society. When reviewing this kind of documents, we cannot neglect the analytic concept of "rural society", which is built upon Fei Xiaotong's insight on the nature of Chinese rural area in the 1940s. In his *From the Soil*, Fei Xiaotong summarized the nature of Chinese society as "rural" from a macro perspective (Fei 1985: 1–7). In Fei's view, the analytic concept of "rural society" was proposed as an "Ideal Type",[1] so it didn't refer to a specific form of society; this concept was put

[1]Ideal Type is generally translated into *Lixiangxing* in Chinese. Fei Xiaotong believed: "Ideal Type can be translated appropriately into the type in concept, belonging to the category of rational knowledge. It is not imaginary but common nature in concrete things, which is formed in people's understanding process" (1985: III). It is actually the conceptualization of Chinese rural life, which is a theoretical framework. If you see Chinese behavior with "rural character", then we will have a generalized understanding of Chinese people. It differs from the ethnographic-style investigation at a particular time (1936) and in a particular place (Kaixiangong Village) by Fei (1939) in *Peasant*

forward only to facilitate analysis. The connotation of "rural society" actually referred to the nature of "grassroots" society in China. In a certain sense, this was the foundation of Chinese society. I don't dare to say that this extractive concept about the grassroots culture is able to fully represent the Chinese culture. But from the statistic that around 85% of China's population are peasants, perhaps only with the understanding of the life in rural area and the culture they have created, will it be possible for us to understand the entire Chinese culture.

"Rural area" should have three characteristics concerning the topic of authority and disputes settlement I discuss here, including a key feature of "the pursuit of no litigation", which has become an ideal of rural society.[2] What is "a society without litigation"? Putting it in a simple way, if a dispute happens in the village, the best solution is to settle it in private rather than through formal channels.[3] In the eyes of villagers, the so-called "pen expert" lawyers are "trouble makers". In rural society, this kind of people has no social status at all. The rural society values "rule by rites" instead of "rule by law", which emphasizes the improvement of individual and

Life in China. This book is more of a description of the facts of a village. But there are thousands of villages like Kaixiangong Village in Chinese society while the differences among them are very obvious. It is actually a problem of methodology (Fei 1996a, b) reflected on by Fei Xiaotong about how to dialyze the whole China through conducting surveys on one or several villages and avoid falling into the dilemma of ethnographic research, which studies only details but not the overall picture. Fei Xiaotong called this method of summarization of "categories in mind" as a method of type comparing, which tries to give a theoretical sublimation to the study of community conducted at a particular time and in a particular place. Therefore, he called it "the work at the second phase". Its core task is to conduct "analysis of social structure", that is, the work to "see both details and the whole picture" (1985: 90).

[2]It should be emphasized that the "pursuit of no lawsuit" never really means "no lawsuit" but an attitude of most people towards litigation, which is an ideal. Moral elites in the society often use the harm of lawsuit to persuade people in order to instill the ideal of "no lawsuit". In *Ancestral Temple Regulations* written by Wang Shijin in Ming Dynasty, the harm of lawsuit was listed so as to advocate the ideal of "no lawsuit". There were regulations as follows: "A place where people in peace, with taxation completed and no lawsuit is the paradise in the world. Lawsuit only does harm to people without benefits: it wastes money and consumes energy; if tricks are used, people become bad in heart; and no matter how incorruptible the government is, you will be teased in the city, scolded in *yamen* (government office in feudal China) and have to wait to meet the official in days. If you are not righteous, you have to suffer loss; … You may suffer from caning, punishment and even home damage. You will injure yourself and humiliate your family while revenging wrong with wrong will also injury the future generations." ("Deyi Record", *Ancestral Temple Regulations*, cited from Fan et al. 1992: 178). The manifestation of this ideal in modern times is no more than the theory and practice of "local autonomy" in early Republic of China. In Zhenping of Henan Province, a "committee to quell the litigation at three levels" was set in rural autonomous organization. As to its purpose, the "committee to quell the litigation was set to mediate disputes in all districts and villages; while counties also had their committee to deal with disputes. Therefore, before a lawsuit was created, disputes had been settled unconsciously" (Zhao 1933: 303).

[3]The phenomenon of settling disputes privately in rural society can be reflected from the relationship between the state law and rural lawsuit in the late Song Dynasty by Gernet. Gernet considered that peasants sought private solution because they feared the severe criminal law in state legislation as well as the high cost of litigation (Gernet 1962: 106–108).

compliance with the traditional rules.[4] If someone violates the "rule by rites", he will be called "scum", even his family will be looked down upon by local people. For locals, the "scum" appears due to the lack of appropriate education at home. The so-called dispute solution also focuses on education so when judging the right and the wrong, the mediator often follows rules established in the village to decide the punishment. The case put forward by Fei Xiaotong can fully illustrate the issue:

> The case is about an old man who was addicted to opium. The eldest son hated his father's habit because it was depleting the family's wealth, but the son couldn't easily interfere. The second son had no regular employment, and he secretly smoked opium as well. In fact, he would often egg his father on smoking opium, so that he could join in. The dispute arose when the elder brother recognized what the younger brother was doing, and severely beat him. The younger brother, however, blamed his father, and in a fit of temper, the eldest son scolded the father as well. These mutual recriminations led to a big fight in the family. Eventually, the village elders for resolution interfered into mediate the dispute. That gentleman said as usual that, this scandal involved the entire village. Then he used a range of moral principles to reach a resolution: The younger son should be driven out of the village; he was morally bankrupt, which can be seen even from his appearance. The eldest son should be punished because he scolded his father. The old man, the father, deserved this lecture, because he didn't know how to instruct either son in appropriate behavior, and besides that he smoked opium. After the punishments were meted out, everyone went home (Fei 1992: 104–105).

In this case, there is no legal trial procedure which "depends on facts rather than people", while there is only judgment in accordance with the order principles of social ethics. It is first taken into account that a son should be filial to his father according to social ethics. The son daring to "disobey the upper" is wrong in any cases; since the younger son has the lowest status in this case, the judgment would be depended on facts. Consuming opium is the greatest offense to the village customs and rules, therefore the younger son should be severely punished, so he is driven out of the village; it is the father's fault not having the child educated well and therefore the father should be punished. In this case, everyone has been punished due to the violation of the order of "rules by rites", but their responsibilities are not clear in fact. The principle of judgment is based on ethics. It is not a "fair"

[4]Li Yiyuan studied this "ruled by rites", or the cultural root of "ruled by man" as he called it, through comparing Oriental and Occidental. In his view, people in the western countries pay attention to "ruled by law" due to their cosmology or religious concept. Their cosmology assumes that people are born with original sin, so we are not able to be perfect, so they believe that human should be bound by norms. The norms are the initiator of the Western legal development. Li Yiyuan thinks that in Chinese cosmology, it doesn't exist the idea of considering people born with "original sin". In contrast, the Chinese think that people are born with "original goodness", which can be proved by the emphasis on self-cultivation in order to achieve perfection in human's practice. "So Chinese do not assume the existence of a perfect God as the ideal goal. Instead, we only describe the saint's image and deeds as the model of general public. While on the other hand, due to this reason, we do not emphasize external norms including vow and law to ensure rules and regulations. We emphasize on applying self-cultivation to constrain people's behavior; we focus on the inner self-cultivation and teaching people to learn from the saint, so our culture always describes people who want to be politicians as 'saint internally and prestigious externally', which is the root of our society as the one "rule by man" (Li 1996: 111).

decision according to western concepts of legal judgment. But this kind of judgment has its utility in Chinese rural society and is recognized by the locals because it can maintain the order of daily life in rural area.[5]

When comparing Chinese laws and western ones, many believe that all Chinese laws are "criminal laws", where punishment comes first and the penalty is based on the violation of social ethics (Liang 1987/1949). Such a conclusion is right since the ancient Chinese have developed conventions or state laws with a clear purpose, which is to secure the established rules and rites. Anyone violating rules and rites would be subject to punishment and sanction according to conventions or laws (criminal laws).

The second feature of the Chinese rural society refers to the existence of a so-called "gentry power". Fei Xiaotong believed that the politics of rural society was a "politics of inaction". The "imperial power" as the state symbol wouldn't directly interfere with civil life while it was the autonomous organization of the villagers that maintained the social order (1992: 60–64). The state occasionally interfered with rural life only for the purpose of taxation and the prevention of riots. Therefore, the state wouldn't directly manage the rural society but control it indirectly by autonomous organization of "neighborhood administrative system" recognized by the state. The governing philosophy of county-level officials was "long-term stability" and "no civil commotion and unrest"[6] (Gernet 1962: 106–107).

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[5]But in rural area, these "reasonable" civil customs often conflict with the state law and cause "illegal" issues. Recently, in the movie *The Accused Shan Gang* which has exerted a huge repercussion, in order to punish the unfilial daughter-in-law, Shan Gang asked her to show a movie for the whole village and asked her parents to educate their daughter. Due to the public humiliation, the daughter abused her parents-in-law more seriously so that Shan Gang asked the militia to parade the daughter-in-law through the streets. Practising private penalty was apparently in violation of the state law, which put Shan Gang in the dock. But legal scholars with compassion to Shan Gang argued that his behavior was acceptable in the village, which meant that he punished the daughter-in-law in accordance with local conventions, so the locals didn't understand why he was accused (Liang 1998: 17). The theme of the movie is not really this but a call for improving peasants' awareness of state laws through the transformation of their political awareness. As legal scholars said, "It is just too naive to consider it as the ignorant ideology and outdated idea among peasants and consider that legal problems in rural area can be solved by strengthening peasants education and improving their awareness. In fact, different from the general idea, scholars are not always cleverer than peasants. Legal solutions cannot always meet client's requirements while its arbitrariness, stiffness and unrealisticness may also cause new problems" (Liang 1998: 18).

[6]Therefore officials responsible for "folk affairs" had an important duty to educate people. In "Instructions for Prefecture and County Affairs" published in the period Emperor Yongzheng of Qing Dynasty, Yongzheng as the emperor instructed local officials: "As parents of the people, officials in prefecture and county should promote the moralization of imperial court to change customs in rural society; it is your second responsibility to advocate virtue and penalize the vicious upon the imperial court's decree, … so good people will follow the trend and become virtuous while the evil will thoroughly reform himself. So hearing will disappear through education while laws can be implemented and the morality can be promoted." ("Notice of Prefecture and County", *Instructions for Prefecture and County Affairs*, Vol. 1, edited by Tian Wenjing and quoted from: Zheng 1991: 175–176).

In *Imperial Power and Gentry Power* (Wu and Fei 1988), Fei Xiaotong put the "gentry power" on the opposite side to the "imperial power". He thought that in civil life, although the general public didn't concern about state affairs, some homecoming squires with fame and official rank should intervene in state affairs. These squires generally got a degree of *Sengyuan* (one who passed the imperial examination at the county level) and their privilege as gentries in their twenties. They became very prestigious people in their thirties so they should be notified of all affairs in rural area, no matter big or small.[7] They had become a communicating link between the superior state and the lower civil society. Local officials were more like the "official seal" of local squires, so they couldn't directly intervene in local affairs but deal with them through squires (Wang 1997b: 52–53). When handling daily affairs in the village, these squires became authoritative arbiters, so issues no matter big or small had to be approved by them (Fei 1953).

In fact, the gentry system passing down from Song Dynasty to Qing Dynasty had exerted a dual significance both in economy and politics. Economically, the gentry occupied land; politically, they took "gentry power" paralleling to the "imperial power" (Wu and Fei 1988). Therefore, the state power was not able to go directly into to the rural society but disintegrated by the so-called "gentry power" at township or county level. In several dynasties before Qing Dynasty, gentry who lived in town or county usually had their land in rural area leased to local peasants. They usually had very close contacts with politicians and businessmen in town. These leisure gentrys were actually elites with the ability to contact people in different sectors (Fei 1953; Esherick and Rankin 1990; Kuhn 1994). Therefore, Fairbank (1992: 106) also thought: "Actually, the emperor's appointee to any magistracy could administer it only with the cooperation of the gentry in that area. All in all, in a country of over 400 million people, a century ago, there were fewer than 20,000 regular imperial officials but roughly 1.25 million scholarly degree-holders." In Wittfogel's opinion (1989: 81), such a large group of gentry was not able to "organize themselves into a national body capable of upholding their proprietary rights against the acquisitive and legal pressures of the state apparatus. They were content to use their land as a means for comfortable living, leaving it to those in office to organize and operate a nationally integrated system of political power." Thus, in the power relationship between the state and society, the gentry only played a role of communicating link between the upper and lower class. Although they occupied a certain amount of movable and immovable property, it was difficult for them to form a political union. Therefore, they couldn't form an independent group or class.[8]

[7]According to the demographic statistics of squire in Qing Dynasty by Zhang Zhongli, these squires became government students at 24 years old and died at 57 years old, who played a role in rural area at 33 years old on average (Zhang 1991: 95).

[8]Duara (1988) had a different interpretation on the heterogeneity of rural squire. In his view, the late Qing government ruled the rural society through dual agents. One type was the for-profit state agent while the other was the agent for protection formed by villagers in order to talk to the

Of course, with the abolition of imperial examination system, the transformation of landlord class and the ban on the class oppression after the establishment of People's Republic of China, the gentry system today has actually ceased to exist in rural China while the above so-called "imperial power" and "gentry power" has no longer referred to the same meaning, because the unique economic and political status originally gained by the gentry have been overthrown completely. But it doesn't mean that the power relationship in rural area has disappeared. On the contrary, through several political reform movements organized by the state power in rural area, a new power structure has been established with the core that local elites manage village affairs. In the past, elites like "gentry" played a go-between role between peasants and the state. Does this bridge-like figure still persist today with a changed name? Or such people are no longer needed because of changes in the society? This is an issue worthy of further study. In a certain sense, although the name has been changed, the structure of society may also be the same. In the past a man called "gentry" might be an elite in the rural area; now he is called "cadre" but he is still an elite in the rural area. In the Li Village I study, these elites can be roughly divided into three categories, one is the cadre in charge of the village administrative affairs, who links with the outside world through the state bureaucracy system at different level; another one is the so-called "entrepreneur" who is the "well-off" named by the locals and obtains authority through sponsoring public utilities in the village; the last category refers to the authority of folk belief, who has the "Charisma" authority because of his ability to communicate directly with the God in village temple as Weber said (1978: 121–299). These three types of elites constitute three aspects of the village power structure, and through these three dimensions, the outside world has a direct relationship with this village.

In his early studies, Fei (1985: 53) believed that in rural society, the so-called state law was actually not efficient. It was "rite" that maintained order there, which was generally called "tradition". Thus, "rule by rites" used to manage village affairs can be a third feature of rural society. Qu (1981) also believed that in China's traditional society, "putting rites into laws" or "putting rites into punishment" as legal historian said (Zhang 1998: 296) was especially emphasized, which was a "culture of rites and law" in a sense (Liang 1994).

It should be further noted that in the description of Chinese society, most people consider the Legalism of "ruled by law" is opposite to the Confucianism of rule by "moral" and "rites" and their conflicts are irreconcilable. But according to Qu (1981: 304), the actual situation is different from what people speculated. The confrontation between Confucianism and Legalism happened in the Warring States and Qin Dynasty, while in the Western Han Dynasty, the confrontation and debate between the two disappeared and existed in name only. Thus, the so-called "War between Confucianism and Legalism" has its significance in academic, while the reality is that they are reconciled in one's judgment.

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government directly to fight against the exploitation. Among agents for protection, the grassroots squires played an important role in organization.

Since the Confucianism was incorporated into the formal education system in China's history and tradition, all officials that helped the emperor with supreme authority to govern the state received Confucian education. The concept of justice of Confucian ethics emphasizes on "human relationship", "moral" and "ritual", namely Confucianism (Hwang 1991). But the emperor required his officials to enforce laws impartially, which was the Legalism thought. In between, there was the need for balance and judgment made by people. A good officer should integrate the Confucian spirit of "rule by rites" into the application of state law, which could also be said to the Confucianization of law in imperial China[9] (Budi and Morris 1995; Qu 1998).

Ray Huang cited Hai Rui as an example. His assessment of Hai went like: "Hai Rui pays full attention to the role of law and enforces it impartially, but as a civil official under Confucian education, he always attaches importance to the guidance of ethics" (1982: 135). Hai Rui himself believed that it was difficult to clear the facts of some cases so that judges needed to set the criteria depending on the "ethics and etiquette" of Confucianism. Hai Rui had summed up several methods to deal with difficult civil cases: In a dispute between two brothers or uncles and nephews, treating the younger brother and nephew unjustly is better than treating the elder brother and uncles unjustly; in a dispute between the rich and the poor, it is preferable to upset the rich than the poor; it is preferable to wrong the stubborn than the honest. In case of property dispute, in order to show the "rule by rites" of Confucianism, judgment should rather wrong the gentry than the common people. On the contrary, in case of "courtesy" dispute, it is better to wrong the common people instead of the gentry, which would maintain the hierarchical order to avoid "disobeying the upper" (Huang 1982: 135).

Hai Rui's compromise approach cannot withstand the analysis with the logic of modern Western Jurisprudence. Because from the perspective of jurisprudence, a judge should make judgment in accordance with legal provisions without any selfish motive including "position in the family hierarchy", "social status" and "decency". But looking at this "compromise" approach of Hai Rui in a cultural background, perhaps we can understand Hai's approach. This approach is precisely what a rural society stressing on "rule of rites" is willing to accept, which is also considered as the most reasonable and fair judgment in the eyes of people, meaning that such a judgment is conformed to "common sense" or "rite". This is the order of "rule by rites" said by Fei Xiaotong, i.e. "rule by rites" maintains the social order in rural China. There is a big difference between "rule by rites" and "rule by law" here.

[9]In the summary of Chinese legal culture by Japanese scholar Shiga Shuzo, he emphasized the integration of human relation, reason and law and described the relationships between these three aspects by using words of a Chinese official: "between the heaven and earth, the two words (it is suspected that it should be three words) including law, reason and human relation originally run parallel without confliction" (Shiga 1998b: 22). The integration of these three is a form of "Confucianization" of Chinese law in my opinion.

According to Fei (1992: 50), in terms of functionality, "rite" and "law" are not mutually exclusive, because both are "a code of conduct". But the difference between them lies in the "rule". "Laws are implemented by the power of state", "while it is not this tangible authority to maintain rites but tradition".

"Rule by law" is supported by the tangible state power, while "rule by rites" relies on tradition or customary practices. Therefore, it is "ritual laws" that maintains the civil order, which is also recognized by scholars focusing on legal culture (Su 1996; Liang 1996a, b). From the history study of Ming and Qing dynasties, we can see that in this period[10] the so-called rural folk custom was extremely efficient. Actually, such custom became the basic norms of regulating civil disputes. For example, during the period of Emperor Qianlong in Qing Dynasty, Rizhao City of Shandong Province had such a convention: "tenants are responsible for the harvest and equal distribution of crops". Such principles became an effective guarantee to maintain the social order in rural society. It is worthy of attention that the state accepted this kind of customary practices at that time. The convention mentioned above was reported to Emperor Qianlong on November 10th of the 17th year of Qianlong's Empire by Yang Jingsu, the governor of Shandong (Cao 1993: 223).

In addition, the rural order under "rule by rites" is implemented by "trust", which is fundamentally different from the understanding of social order ruled by law in modern times (Misztal 1996). The relationship between people of modern society ruled by law is full of "suspicion". Nobody trusts each other with the fear of others' infringement upon his interests. This will cause social disorders. As a result, people set up contracts to guarantee mutual noninterference and jointly approve an authority to supervise the fulfillment of contract (Hobbes 1985), which is the political belief of modern Western society. Fei Xiaotong explains this in the following way:

> Modern society is composed of strangers. We do not know each other's past. When we talk, we must explain things clearly. Even then, we fear that oral agreements are not binding; therefore, we draw up written contracts on which we sign our names. Law arises in this fashion. But there is no way for laws like this to develop in a rural society…. In rural society, trust derives from familiarity. This kind of trust has very solid foundations, for it is rooted in customary norms…. Trust in rural society is based not on the importance of contracts but, rather, on the inter-dependability of people, people who are so enmeshed in customary norms that they cannot behave in any other way (Fei 1992: 42–43).

A corollary of the above explanation is that there is a set of mutual trust mechanism in the rural society emphasizing "rule by rites", which affects the relationship between people as well as the specific operation of state laws in rural society. In a certain sense, the traditional Chinese legal culture is based on such a trust mechanism.

[10]In Ming and Qing dynasties, the development of rural custom could be proved by a lot of historical data but "in the vast history before the Song and Yuan dynasties, no textual research existed" ("Letter with Li Yihou", *Collected Works of Weijizi*, Vol. 8, Cao 1993: 227).

9.3 Differential Mode of Justice

However, what is the form of such a trust mechanism? Here, I want to put forward a concept of "differential modes of justice". The field data mentioned above has enabled us to see that in rural area, when the principle of reciprocity suffers from various forms of damage, the crisis on the maintenance of social relationship emerges. In a certain sense, the pursuit of the principle of reciprocity constitutes the basis for the concept of fairness in rural society. This is actually a kind of folk understanding of justice. Based on the village materials previously described, we need to enlarge our vision to discuss the concept of justice. In this regard, I have formed preliminary theories from my past research (Zhao 1997, 1998), and here I want to further discuss the following point: what exactly is the understanding of justice in civil society based on the differential modes of association put forward by Fei (1992)?[11] At the same time, how does the civil society express its understanding of justice?

From the perspective of relation theory, people live in the society, therefore they are also involved in a variety of social relationship (Marx and Engels 1970). In a rural society full of familiar faces, it is the moral custom that makes people behave accordingly. In addition, self-moral is an evolving process stressed by the moral development psychologists, with the deepening of socialization, the competence of moral cognition will be improved gradually (Kohlberg 1976, 1984). This improvement may go beyond the cross-cultural difference (Cheng 1991) but sociologists are more willing to find out the reason from social facts outside the personal moral development. In a village community, a person chooses not to steal, probably not because he feels it wrong but afraid of losing face and putting shame

[11]In the study of the Chinese concept of "justice", researchers usually conduct an analogy between the justice concept in Western society and the definition about "justice" in ancient Chinese literature. As Young clearly indicated, since all great thinkers before the Empire of China took social order planning as the core of their thinking, so they were also interested in the implementation of social justice like Plato (1968) but with different approaches. As a result, we could translate the Chinese character "义" in Chinese classical literature directly into "justice" (Young 1981: 40). Huang Guangguo further used the western "theory of justice" as analogy of the Confucian "justice" (Huang 1991: 138–139). Xia Yong also believed that the so-called "integrity", "righteousness" and "justice" in ancient Chinese had the same meaning as "justus" and "justitia" in Latin as well as "justice" in English, which could replace each other (Xia 1992: 28). In Chinese, "justice" means that the human behavior complies with certain etiquettes so in *The Doctrine of the Mean*: "Person with justice is that with appropriate acts" (Chapter XII). Thus, in ancient books, "justice" refers to appropriate acts in certain "time". As Pang Pu said, "justice" meant "appropriate" and "just right" in its simplest sense (Pang 1996: 37). In the perspective of paleography, "justice" is an associative compound combining "sheep" and "I". In the earliest Chinese dictionary *Origin of Chinese Characters*, the explanation to this word is as follows: "Justice is the prestige of a person worth sacrificing for." Duan Yucai annotated: "In ancient times, prestige means justice, while nowadays benevolence does; manner is the expression used in showing one's prestige…. Justice itself means the appropriateness of both manner and appearance. People with appropriate manner and appearance are good…. Acting like a sheep shows the trueness of a person" (Fang 1995: 283).

on his family once discovered. It is more likely that he would be isolated by the community if he stole. Therefore, the premise of people's behavior is the social reaction to such behavior while this reaction of the society is in fact a constraint of social custom or social control. In short, we conduct certain behavior because the moral practice requires us to do so, which is a matter of "keeping face" in customary vocabulary (Hu 1944; Ho 1976; Hwang 1987; Zhai 1995).

In this case, in the living practice of Chinese rural society, people are more likely to accept conventional ethical principles based on social relationship, with which the "justice" can be defined. In rural society, the logic of life may be comparatively simple: ethics in accordance with customs is justice, and vice versa. In addition, people's understanding of justice often refers to the "giving" of benefits or convenience to others (appropriate behavior), while others are able to "give back" corresponding benefits or convenience, which is what we have summarized in "fairness based on reciprocity" as the basic social interaction principles. It is precisely on the basis of this "reciprocity" principle that people understand the harmonious and orderly social relationship[12] (Barry 1995). As I have repeatedly stressed, "reciprocity" is the core principle of social relationship construction in rural area. Such a principle brings different benefits to people and such difference decides their relationship whether close or distant. To sum up, this is a mutually beneficial relationship in the differential modes between people. It can be further inferred that behind this reciprocal relationship of difference, there is a "differential modes of justice". The core of "differential modes of justice" is that the closeness of relationship and the benefits or convenience one can get from the other would

[12]Even from the perspective of paleography, "justice" and "interest" are always related. As the well-known words of Mo-tse, "love each other and benefit each other"; Guanzi said "people will know etiquette after being well-fed and well-clad"; in addition, it was said that "morality and justice are the root of interest" ("The 29th Year of Xigong", *The Commentary of Zuo*); "a great state can be the leader of an alliance only when it deals with affairs with justice" ("The 8th Year of Chenggong", *The Commentary of Zuo*); "establish a state based on justice" (the 16th Year of Chenggong, *The Commentary of Zuo*); "people will be involved in discussion about people while interests will be involved in discussion about justice" (Part 2 of "Zhou Chorography, *State Chorography*"); "people have an emperor to manage the state with justice so that profits have been brought about by justice and his people will be enriched" (*State Chorography*, *Jin Chorography*, *Wugong*) (Zhou 1995: 8). The discussion about relationship between "justice" and "interest" by Confucian and Mo-tse can also be referred to the discussion of Gan Xueping and Huang Xingchun. Their definite conclusion was that even Confucius who emphasized on "benevolence" rather than "profit" also strongly advocated the principle of reciprocity in social morality construction, thus Confucius claimed, "do not impose on others what you yourself do not desire" (Gan and Huang 1995: 155). In addition, when Shen Ching-sung reflected on "the controversy between justice and benefits", he also put forward the speech of Confucian Mencius "not to talk about benefit" and "get rid of interest and get hold of benevolence". Later Confucian took a reductionist explanation, considering that "Confucian must do justice without private interest", which was extolled extremely by Confucian Dong Zhongshu in Han Dynasty. So from a certain sense, the so-called Confucian concept of "justice outweighing benefit" was only a spread of Confucian ideas in Han Dynasty rather than its original meaning (Shen 1992: 963).

determine a judgement. In short, justice depends on the depth of "relationship".[13] Therefore, it is not universal. It is decided by the relationship, which is random and uncertain itself. Under the relationship structure of differential modes in Chinese society, people's concept of justice can be expressed as: justice depends on differentiated relationships between different people, which means the concept of justice is formed according to the differential modes in social relationship.

Liang (1987/1949: 79–80) once believed that the Chinese society should be "a society based on ethics", which stressed on the relationship between people and orders. People would have more emotional investment to those with whom had a close relationship while less to those estranged ones. You can also say that the Chinese people's concept of justice is made inside the heart (love) and revealed outside.[14] That is, justice is determined by the degree of closeness with family members and acquaintances. Things are measured according to "relationship", the depth of which is used to determine their closeness with others.

Different from the "group mode" of general equality in a community in Western society, the Chinese society is a "differential modes" which emphasizes the closeness of relationship that expands outward concentrically like water ripples until it disappears (Fei 1992: 21–28). In this "differential modes", if the mutual interests of both parties are able to maximize, the relationship distance of this differential modes will be the smallest. Conversely, if the interests of both parties cannot be satisfied or if the interests are minimized, the relationship distance of this differential mode will be the largest. Since mutual interests among family members may be the maximum, in the differential modes of relationship between parents and children, the mutual relationship distance will be minimized. While among strangers, the mutual interests are the minimum, so the distance in this differential mode will be maximal.

In short, the "differential modes" of mutual relationship means to determine justice due to the relationship distance. Just as Fei (1992: 25) described, "Westerners struggle for their rights, but in our society people seek connections in higher places and would do everything for the sake of relationship." People are familiar with this language no matter in rural or urban area: "Since we are friends, you can give any price you like." Or "Any penny matters since we should not owe each other. I should give a fair and reasonable price." Here the principle of price equity is translated as: If somebody has a close relationship with me, the fairness of

[13]Liang Shuming interpreted Chinese ethics in the book *Gist of Rural Construction* in this way: "What is ethics? Ethics means: A person has developed relationships with others since he was born (at least with parents and then brothers and sisters). From birth to death, his life is always associated with others and he always lives among relationships…. Relation develops in the relevant relationship and then there is justice…. In short, justice is born because of relation so that everybody is in the bonds of friendship; we all safeguard our own justice and relation, which is ethics" (Liang 1989/1936, Vol. 1: 659).

[14]For Shiga Shuzo, this internal "relation" was closely related to external "act" or "custom". In other words, in his view, the "custom" or "habit" based on human relation was the root of Chinese law (Shiga 1998c: 82).

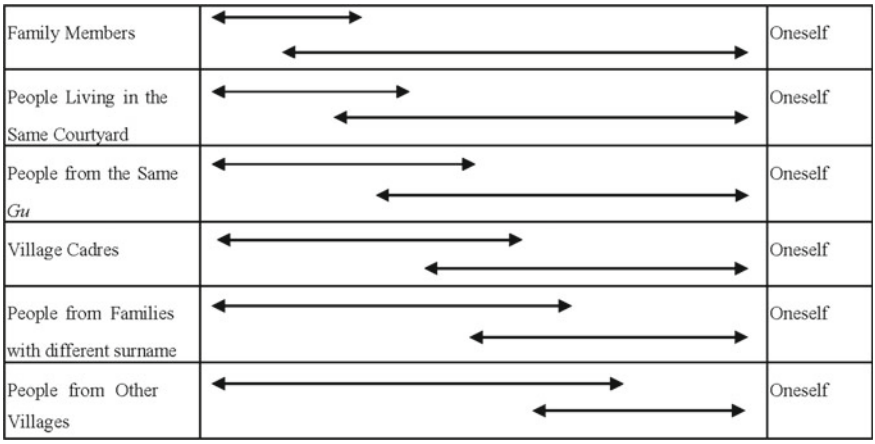

Fig. 9.1 Equity principles under differential mode. *Notes* 1. The left column divides people roughly into six groups, who have a relationship of differential modes with the "oneself" in the right-hand column; 2. In the middle column, the length of double arrow line located at the upper part means different relationship distance between people and oneself; 3. The length of double arrow line located at the lower part means the degree of reciprocal relationship

price can be defined based on the "close relationship" in the differential modes; on the contrary, if the person is only a stranger, in other words, their relationship is remote, then a fair price will be calculated rationally based on the so-called "distant relationship" in the differential modes and even a penny less is not possible. Both of these standards are considered fair by the parties involved, because the distance of relationship is not the same in the differential modes of reciprocity between people (Figure 9.1).

Young (1981) once suggested that in Western society, justice for an individual had to be defined according to his position in a larger community. "Doing the right thing" referred to bring about happiness to a related group (a family, a tribe, or even all of humanity). Thus, no matter the fairness proposed by Plato (1968) in *Utopia* caused by the functional differentiation of labor in a centralized state or the rational individual proposed by Rawls (1971) is the first principle of social justice order, the justice theory itself contains the teleology of social life. It can be said that from Plato till today, the traditional Western ideas of justice are only transferred from one theory to another in terms of the order of purpose[15] (Young 1981: 39).

[15]Chinese political scientists recently discussed social justice under such a framework. Their argument centered on a core question that whether a principle of social justice could be implemented among individuals or only under the force of government. Conservatives hope that the government can leave the society alone so that the society could realize social justice freely (Liu 1998: 121–159). But it seems that this anthropologist's dream has already been wiped out at least from today's perspective.

In Young's opinion, Chinese people applied a mechanism form to the justice theory. This mechanism form considered that each individual should fulfill his role appropriately as defined by Pang (1996). As a result, before Imperial China there was a notion that people should not complain but consider their social responsibilities as morally correct so as to suppress their selfish impulses to achieve social objectives (Young 1981: 40). Thus there was the concept of constructing social order with "rites". However, for Munro, this kind of social order based on "rites" actually refered to three aspects including the location of a number of roles, the hierarchical relationship between these positions as well as the code of conduct to manage this relationship (1969: 11). Thus, if under the social framework of "rites", everyone does his job, the perfect order status can be achieved. So in Confucian norms, once the sense of hierarchy appears, the concept of equality for all will not exist. It is probably only a social relationship of differential modes appearing gradually based on "rites" according to the distance between people, which has become an understanding of social justice in the knowledge system of local people after the civilian change of ethics and rites of Song and Ming dynasties (Chun 1992).

I think that the core idea of Confucianism is "human relationship" and it tries to implement the "five cardinal relationships" by the way of thinking in the "differential modes". If corresponding benefits can be obtained in accordance with the relationship distance in the differential modes, this result should be fair, otherwise it is not. The simple examples cited above have shown that the fairness of price is often determined by the mutual relationship between the two people. In the close relationship between two people, the price may be set at a low level, vice versa. Therefore, the principle of fairness may not only appear between two strangers as Huang (1991: 68–71) said, which in fact plays a role between acquaintances or even relatives, because the reciprocal principle behind it makes it common. It should be further noted that, due to the presence of relationship in differential modes, this reciprocal fairness can be realized at different levels.[16]

[16]Huang Guangguo once pulled out three interpersonal relationships in actual contact to further illustrate the significance of differential mode of justice principles in real life, namely emotional relationship, mixed relationship and instrumental relationship. Huang Guangguo believed that people used different "contact rules" in different relationships. In emotional relationship, people would use the "law of demand", where there is no rational calculation; in mixed relationship, people adopted a "human relationship law"; and in instrumental relationship, people adopted the "equality law" with a rational calculation (Huang 1991: 68–71). It is extremely difficult to distinguish these three relationships defined by Huang Guangguo. In urban community, this classification may be very effective, but in rural community, the situation is not so simple. As Fei (1985) discovered, "the relationship between cousins can be as far as thousand miles away". In rural community, it becomes hard to know relative relationship clearly, let alone the relative-friend relationship. Thus in the actual situation, it is more likely to adhere to the "human relationship law" based on the relationship and friendship of both sides. But it is not easy and not necessary for the parties concerned to define the specific relationship category. Moreover, it is reasonable if the Confucianism thinks so, because we would not love our neighbors more than our families and love strangers more than our own acquaintances, otherwise it is not a normal situation (He 1988: 54–57).

For the "reciprocal fairness", it is necessary to further emphasize that the so-called reciprocity refers to the one in relationship at different levels, which means the reciprocity shows the differential mod because of different "human relationship" mentioned above. The so-called "reciprocal fairness" refers to the concept of fairness based on different levels of the differential modes.

After the adoption of daily life language materials induction, historian Yang Liansheng clearly pointed out that "repaying" is a core concept to judge Chinese social relationship. He quoted such a ballad with the corresponding English translation in his materials (1957a: 92):

> When heaven sends rain earth turns to mire, each mortal slips and falls;
>
> In struggling to regain his feet, each mortal creeps and crawls;
>
> Dost thou expect thy friends and kin to lend a hand to thee,
>
> Repay each sip of wine with wine, and each cup of tea with tea.

This ballad is about the social relationship based on "repaying" as a form of mutual benefit in Chinese daily life. In his given English translation, Yang Liansheng translated Chinese "*la*" into "lend" and "*huan*" into "repay". From the translation or the understanding of Chinese characters, we can clearly see the idea of justice based on reciprocal relationship of differential modes emphasized by the civil society. The so-called reciprocal relationship means the mutual exchange of interests, that is "being nice to me and I'll be nicer to you" or "repay a horse when you get a cow and repay something when you get something" (Yang 1957b: 291). The so-called justice of differential modes as this ballad shows that when a man stumbles, his relatives and friends will help while strangers maybe turn a blind eye to him because the person's relationship distance with strangers are longer than that with his relatives and friends. Such behavior is considered to be a "right" principle of conduct in the public consciousness, which can be said to be the most basic understanding of justice of the general public.[17]

People often consider the so-called "human relationship" and "relation" in the Chinese society as a product and typical characteristic of the society ruled by man from a self-condemned perspective and despise such relation from the perspective of modern legal system. It is obvious from the judicial system reform in the late Qing Dynasty (Ma 1997). Under the support of this notion, the state authority attempted to restrain various folk behaviors through legislation, so a number of legal provisions were set. But at last, most of these provisions were not fully recognized by the civil society, so the conflict of legal concepts between the state and local government appeared. This is what I have repeatedly emphasized in the

[17]When Shiga Shuzo addressed the characteristics of China's legal culture, there was a clear interpretation of "reason". He believed that "reason" was "justice of common sense and feeling of equity". According to him, Chinese "feeling of equity" was "to find the equilibrium point through allocating a little loss or pain to either side of opposites" and so on (Shiga 1998a: 13). From another perspective, it means the two sides would get their own interests to achieve mutual benefits. This is roughly what the Chinese concept of justice is.

previous relevant sections. Of course, the failure of new legal provisions in civil society doesn't mean that there was no need for the law or the concept of justice to tell the right and wrong but there was an existing set of concepts concerning justice. In short, this set of concept was often neglected by the legislative system of the state.

9.4 Convention and Law

As previously said, the central initiative of China's reform is to establish a sound market economy in China while the establishment of such a system has to be realized by the construction of modern legal system by the state (Liu and Xia 1993; Chen and Jiang 1993; Gong 1999). In this way, the "legal institution ruled by man" in the past can be transferred to the "legal institution ruled by law" now (Cai 1999: 365). Such a discourse system seems to be an axiom in our concept, but it might be a far-fetched idea after careful consideration. Li (1996: 6–10) has made it clear that in fact sometimes customary practices rather than state laws are more conducive to the successful completion of transaction, so if state laws show respect for conventional rules, the cost can be reduced to promote the improvement of market economy.

But it seems that state laws are probably constructed without giving sufficient awareness to the efficiency of solving civil disputes by the folk conventions, but solely based on Western legal rules.[18] The history before reform precisely indicates that folk customs and conventions are often put into the lists of feudal habits and objects to be eliminated (Su 1996: 13). For Chinese village communities alone, with

[18]Legal researchers often analyze the declining function of customary law in resolving civil disputes from the perspective of its replacement by the state law and attribute such decline to the "eastward transmission of western sciences" in modern times. In the inductive research of customary law in China by Gao Qicai, he pointed out clearly: "As law of Chinese model, it has always been composed by two parts including the one formulated by the state and the customary law, which coexist and supplement each other for thousands of years. After the eastward transmission of western sciences, under the influence of civil law system, the law formulated by the state has been strengthened and gradually gained an absolute advantage in the form while the inherent customary law has constantly been forgotten to a minimum scale. Legal scholars who grew up in this environment have become accustomed to the formal, classic mode of thinking and devoted almost all of their attention to the law formulated by the state. They center on the code of written law, becoming diligent glossators. We would better consider the issue from another perspective and face the life situation of grassroots, research into the deep down, draw rational factors from a large number of existing but fragmented customary law and look for multi-channels to adjust the law in line with social trends and real social life so as to make the institutional law of state truly effective" (Gao 1995: 2–3). Although such views have nothing to blame, it should be noted that the neglect of customary law is in fact an inevitable result of the incorporation of the whole country into the globalized nation-state building (Giddens 1985, 1991). In today's reality, people's behaviors have not been restricted only by customary law, but a new set of rules constructed by the blend of state law and customary law.

the nation-state building at the beginning of the Republic of China when "family" was replaced by "state clan", communities were gradually transformed into an integral part of the planned social institutional change by the state power (Fei 1939; Siu 1989), while peasants were gradually transformed into "citizens" of the state by the same power (Wang 1997a).

The state power transformed the inherent culture and living customs of rural society by selectively designating them as "bad habits" or "inappropriate" things (Wang 1992). For example, rural customs and conventions from the grassroots level like "village regulations and agreements" were originally set by villagers voluntarily[19] in order to rationalize the relationship between villagers, solve rural disputes, conduct moral education and help each other in difficulties in places below the county level (Hauf 1996). However, as the state power gradually infiltrated into rural area, these "local rules" created by villagers were transformed into government action. New local rules or regulations were written by township government officials.

I remember that on the first day I went to Li Village, after making contact with the village cadres, I wandered in the village. In the afternoon, I saw there was a piece of "villager regulations and agreements" on the east wall of the Village Committee. Then a middle-aged man was curious about my presence in the village. I replied that I came to find out ways to solve village disputes. Then he and I had the following conversation:

Villager: It is not worth studying. It cannot be solved without money.
Author: Do people often turn to the court in the case of disputes?
Villager: They try not to do that since it costs a lot. Sometimes, the money got back from winning the case is not enough to pay for the presents.
Author: Generally speaking, do you think the court is fair?
Villager: It depends. Everyone knows that "even an upright official finds it hard to settle a family quarrel", so it makes judgment in bewilderment. Generally, people want to solve disputes in private. They go to the court if it fails.

[19]Such "village regulations and agreements" were set up voluntarily by villagers on one side and showed the restraint and control by the civil authority to villages' acts on the other side. A notice outside the ancestral temple of Zhang family of Huizhou in the 25th Year of Emperor Qianlong of Qing Dynasty (1760) can prove that: "The ancestral temple of Zhang family instructs: The river in front of the temple, from the two ports upstream to the Shuikouhengtan downstream together with the east river from the bridgehead upstream, no free walking to the river and non fish in the river is allowed. Everyone should comply with the rule with no difference. Some unscrupulous people violated the rule and fished along. Some were even so shameless that they dared to catch fish in the river undressed regardless of women's passing by to wash and fetch water, which was deeply abhorrent. The temple assembled all villagers to forbid this act strictly. Anyone dares to fish or catch fish in the river in the future will be sent to the feudal official and punished severely. Everyone must abide by the rule and no regret is useful. It is hereby to issue the instruction" (Its original copy is stored in Chinese Academy of Social Sciences, Fu 1989: 35–36).

Author: Is everyone willing to abide by the "villager regulations and agreements" here?

Villager: Nobody ever reads this. They are written by the village cadres to let the upper authority see. Actually they are useless. In case of a dispute, no one will follow what is written on the "villager regulations and agreements".

This "villager regulations and agreements"[20] promulgated forcibly by the government have lost its original voluntary characteristics and are turned into a tool to constrain individual behavior through the coercive force of the state. But this

[20]I have transcribed the full text of village regulations and agreements as follows: In order to further implement the principle of the Party Central Committee to promote reform and opening-up as well as enhance "rule by law", in accordance with the Constitution, laws and policies as well as situations in our village, it is hereby to formulate rules as follows:

Article 1: Cases resulted in civil disputes won't be punished by police while those cause public outrage by violation of morality are within the scope of these regulations.

Article 2: Villagers living in the village should comply with these regulations.

Article 3: Anyone involved in fighting and brawling, who attacks others to injuries which are not serious enough for law and order punishment shall bear all medical expenses of the victim and a fine of 100 yuan. The victim must receive medical treatment in the hospital above township level or that designated by the mediator committee. Otherwise, he should bear the expense.

Article 4: Anyone who disturbs stations, markets, offices, shopping malls, schools and other public places should bear a fine of 100–150 yuan depending on the seriousness of situation.

Article 5: Anyone hinders state officials in the execution of their duty but not so serious as to bear legal penalties should bear a fine of 100–150 yuan and offer an apology.

Article 6: Anyone who intentionally damages public property should bear an additional fine of 100–200 yuan in addition to compensation for loss.

Article 7: Anyone who destroys a sapling should plant three trees and bear a fine of 10–20 yuan. If his action is intentional, the penalty should be double.

Article 8: Anyone who destroys young crops should be fined 200–400 yuan, depending on the consequences. Anyone should manage his responsible fields and not waste the land, or he should bear a fine of 100–130 yuan/μ.

Article 9: Anyone who creates disturbance due to alcoholism, abuses others and gathers together to gamble but not so serious as to bear legal penalties should bear a fine of 100–200 yuan.

Article 10: Houses without the construction approval on the homestead should be dismantled within the deadline and a fine of 20–30 yuan per square meter should be paid.

Article 11: Anyone who is about to get married must be registered while illegal marriage is forbidden.

constraint has almost no effect because the villagers actually resisted such an external constraint psychologically.[21]

Of course, it should be further noted that in the power mode of rural area, with the gradual penetration of state power into rural area as well as the constant practice of "market economy" advocated by the state, a relationship system to restrain mutual responsibilities and obligations between villagers as well as that between villagers and the state has been gradually built up. The so-called "ruled by law" it brought along has gradually become the main basis for the rural community to solve everyday disputes through the legal publication by the judicial department. But the status quo nowadays is that the legal system and legal provisions as part of the state legal system are in continuous improvement,[22] yet villagers still complain

[21]External influences are subject to the exclusion of rural society in general, which in a certain sense has become a habit in their lives. Fei Xiaotong once showed such psychology of exclusiveness in the form of folk tale. When he told his daughter about the legend of Kitchen God Worshipping, he made up such a story: "In our hometown, we offer sacrifice to the Kitchen God on December 24th in lunar calendar. It is a day to send the God of Kitchen to the heaven. The God likes to eat glutinous rice dumpling so that every family prepares a lot of those dumplings for him. There is a legend: … In ancient times, there were very evil men in the north, riding a horse and attacking us. We were farming and we had no horse, so we couldn't run fast or beat them. After they conquered our ancestors, since they only knew ride horse and kill people, they could neither farm nor weave, they had to demand food from their emperor every day. The emperor asked: How to deal with it? The minister came up with an idea that since the farming people would rebel and be unreliable, so it would be best to send troops to their homes. Each household should feed a soldier and respect him as little emperor…. Soldiers on horseback looked like a hero but when he was in people's house, it was a different story. They followed no rule and law, ate and drank a lot, killed pigs and chickens unrestrainedly and looked for trouble all day long. No one could live at ease while they couldn't avoid their supervision. Farming people couldn't tolerate them anymore. But these soldiers had guns and knives, so they could take people's heads if anything was wrong. Farming people couldn't defeat them. Finally, a clever man figured out a way. Each household pretended to show their kindness to reward the solider at home at the New Year eve. They agreed to make some glutinous rice dumplings on the evening of the 24th in lunar calendar and feed the soliders. Glutinous rice was very sticky so when they bit the food, their teeth got stuck. Then every family killed the solider with their own hands at home but the solider couldn't make a sound…. In order to commemorate the event, the God of Kitchen was worshipped in kitchen altar. On December 24th in lunar calendar every year, every family makes glutinous rice dumplings to feed the God of Kitchen and send him to the heaven" (Fei 1946: 87–89).

[22]Take the institutional building of the court in Zhao County as an example. The present People's Court of Zhao County was formerly set up in 1939 under the Judicial Section of People's Government of Zhao County. In the agent class under the Judicial Section, there were a dozen of people. It had no public activity while its responsibilities were only "suppression of enemy agents, bandit heads and puppet reactionary forces". Zhao County People's Court was not set up until the Land Reform in 1948, at that time there were only seven or eight people. In 1950, Zhao County People's Court changed its name into Zhao County People's Courtroom. In 1958, due to the merging of Zhao County and Ningjin County, it was called Zhaozhou City People's Court. In 1961, it was renamed as Zhao County People's Court. In the period of Cultural Revolution, the public security system applied military control and established the Public Security Military Control Commission of the Chinese People's Liberation Army, so the Zhao County People's Court was replaced. In 1973, the court was restored again (Hebei Province Zhao County Chorography Compilation Committee 1993: 354).

for unfair judgment of disputes. In a certain sense, this situation is caused by a lot of reasons, among which the conceptual conflict between state legal provisions and customary practices is an important one.

In 1920s, Yan (1986) recorded the differences in the knowledge of "stealing" between a peasant and a judge through field survey. The incident went generally like this: a northeast peasant worked in town because of family poverty. He couldn't find the right job and had no money to buy food, so he stole two bundles of shallots in a restaurant. He was caught on sight by the police. In the court, the peasant was accused of theft, but he said: "I took some shallots, but I didn't steal." The judge said: "Why do you deny that you stole things?" He said: "No one in the restaurant said I stole them but the one with the black hat (he meant the policeman and didn't know he was an official). What does this have to do with him? If you don't believe me, you can ask the people in the restaurant." The judge said: "We have both the stolen goods and evidence, so there is no need to check." After three inquiries, the peasant was sentenced to three months in prison. He felt powerless and had to kneel down to beg for mercy. The judge said: "You cannot be forgiven! This is the law." The last words of the peasant showed the conflict between his ideas and the state legal concepts. He said: "In our hometown, I can go to others' yards to eat fruits and vegetables, vice versa. This is normal. How can it be stealing? Or even a crime?" But the judge on behalf of the state law insisted that: "No more denying! This is the law and this is justice!" (Yan 1986: 70–71).

In the preceding part of the text, the logic of both parties in the dialogue is very clear. The peasant had his own understanding and judgment of stealing based on his own experience while the judge also had his understanding based on the legal provisions for this concept. In eyes of the judge, the peasant refused to accept the judgment because he didn't have legal knowledge so it was a "denying by resorting to sophistry". But in eyes of the peasant, his understanding of the concept of theft is very specific, which was a natural conclusion from the scene of his life. The peasant might think: in the rural area, the villagers would not consider taking several shallots from other's home as stealing. Therefore, in his view, the judge was unfair to classify this behavior as "stealing".

Investigation into the conflicts between customary law and state law has triggered a debate. The focus of debate was the role and significance of the so-called customary law for solving civil disputes in the construction of modern Chinese legal system (Liang 1996a; Su 1996: 10–20). Su Li once pointed out that in the construction of modern legal system, all compulsory legal system with state ideology would eventually be a mere formality due to its ineffectiveness. The practice of legal transplantation in Japan would not coordinate with the Chinese culture, so the only solution was "to learn from the rules lost in the countryside" that makes use of Chinese "local resources". In addition, based on local knowledge and epistemology of bounded rationality, such local resources of law were not limited to the interpretation of legal issue in historical materials, while they were more likely to be hidden in the habits of folk life. Starting from the interpretive framework of "society and the state", Liang Zhiping carried out an in-depth textual research and analysis of "customary law" in Qing Dynasty with the method of social history. His

conclusion confirms a comprehensive common law system that exists behind the "local customs", "rural rules" and "conventions".

Therefore a number of legal researchers turned their attention to voluntary customs and conventions from civil society, i.e. issues about customary law. Customary law is related to "custom" because it came from the voluntary and consent of the civil society and developed into customary law as time went by.[23] It is the charm to quickly solve civil disputes, which means it is "controlled by practical rationality" proposed by Liang (1998). For my own understanding, this so-called "practical rationality" is actually a behavioral logic to support villager life as well as a widely accepted concept used to measure right and wrong in civil society.[24]

Why the village dispute resolution mentioned above was defined as law? Why were so many principles used in local community to maintain life and relationship called law? This is actually asking a jurisprudential question of "what the law is". Before answering this question, it is necessary to quote the highly inspiring discourse of legal anthropologist Hoebel as follows:

[23]Liang Zhiping gave a clear definition of customary law in the book *Customary Law of Qing Dynasty: Society and State*: "Customary law is an intellectual tradition. It was born in civil society, out of habit, which is shown obviously in the long-term life, work, communication and interest conflicts of villagers so that it is full of spontaneity and with local characteristics. Since this set of knowledge is a practical substance, it is dominated by practical reason to a large extent. These features of customary law differ markedly from the state law. Broadly speaking, the state law is neither the legal code only nor the product of legislation. It also includes rules, notices and judgment issued by the relevant national institutions at all levels. State law in this sense can be seen as an elite intellectual tradition with conscious protection and unity. It has a strong symbolic implication and shows a strong characteristic of cultural selection" (Liang 1996a: 128).

[24]Of course, judging customary law from the perspective of power domination, it is possible to see the oppression of the class that masters economic resources to the villagers who lack of economic resources. Customary law becomes a form of power domination. As Fu Yiling once wrote in addressing the economic development of the Ming and Qing dynasties, "Recently I read the Hunan *Xinhua County Annals*. One section of its historical materials is sufficient to explain how the village landlords ruled the peasants by residual clan power and economic coercion and those measures were also consolidated through traditional customs. It is hereby to quote the content as follows: 'It is Xinhua's custom to carry out strict prohibition and eliminate fake product. On the streets of each village, there are monuments to prohibit officials to take sedan or ride horse, to forbid theft, killing livestock without inspection and quarantine, forced arrest and gambling, grazing cattle, horse, sheep, pig, chicken and duck to eat food grains without permission, to prohibit begging, shelter for stranger and fire at night. There are also monuments to advocate donation first for the stone bridge, wooden bridge, bridge with tile and pavilion, to prohibit graveyard transfer and tree cutting on the tomb mountain, to set free ferry, to publicly ban on selling wifes, selling men as slave and selling women as maidservant. For people concerned, these constraints are stated.' Inscriptions on these monuments are seemingly related to villagers' interests, but in fact are the four strong ropes namely the authority of politics, clan, god and husband used by landlords to restrain peasants, which is a specific measure to stabilize the feudal order" (Fu 1989: 39–40). If we look at customary law from the above perspective, or "super-economic power" (61–66) as Fu Yiling named it, problems can be discovered, which is a topic for further discussion and study.

> When this area of behavior we speak of is found in the culture of a preliterate people, we call it primitive law. When it is found within the cultures of ancient societies that had in their time only recently entered the threshold of civilization, we call it archaic law. And when we find it in the structure of developed civilizations, we call it modern (Hoebel 1964: 4–5).

This appears to be an idea of legal evolutionism, but it is in fact an implication of legal relativity. When judging whether an act is the behavior of law, we should find its ground in the social and cultural background of this behavior, which means that the law is bound to have a corresponding reference system (Hoebel 1964), which is culture in a more general sense.

The Western jurisprudential circle understands the concept of law from different perspectives.[25] In terms of the understanding by legal anthropologist, the concept of "double institutionalization" put forward by Paul Bohannan is worth mentioning. In his view, the study of the law from an anthropological perspective includes three aspects: (1) definition of the jurisprudence used before; (2) "double institutionalization" of all norms and customs of the legal system; (3) relationship between the legal system and a certain type of political organization (Bohannan 1967: 44).

It seems that law should not only be a concept. It also exists in the social order constructed by human behavior and activity. From this perspective, the study of law by anthropologists is completely behaviorism and empiricism (Hoebel 1964). Thus, to understand an abstract issue like "what the law is", it is a feasible research approach to observe the actual process of disputes resolution, which can be proved by the description of disputes resolution presented above.

From a general sense, a society constructed by people is a group where their behaviors are consistent with their culture. In other words, every society has to choose limited behaviors among many possibilities to adapt to its culture. The principle chosen to maintain order can be called the law itself. For this regard, it is not appropriate to consider the law as the overall view of social habits, because it ignores the dynamic side of the law. So it should be understood more as a cultural choice which is constantly happening. The coercive power of law also plays a vital role, which serves as the basis to maintain or establish social order and norms. Such social norms are legal norms, because when somebody ignores or violates them, he will be threatened strongly by privileged people or groups recognized by the society (Radcliffe-Brown 1952).

This is different from the understanding of the tribe law by Malinowski (1926). From the previous discussion, we can see that Malinowski considered that for a

[25]For example, Hart (1954) believed that "what is law" could be understood at least from three aspects: Firstly, how law and order connect together in front of threat? Secondly, what is the relationship between legal responsibility and moral responsibility? The final aspect is referred to as "what are rules" and "to what extent rules become laws". In addition, Stone (1965) further distinguished seven different groups of understanding of law: (1) a complex entirety; (2) the norms to mediate human behaviors are always included; (3) it is the social norm; (4) the complex entirety is orderly arranged; (5) the order is accompanied by high pressure; (6) it is institutionalized; (7) it has a sufficient effectiveness to maintain itself.

responsibility that is a right for one party and a compulsory obligation for the other, the power to maintain it comes from the special "reciprocity" and "openness" mechanism in the social structure. When Bohannan tried to amend Malinowski's viewpoint, he also clearly pointed out his mistake. It seemed to Bohannan that the mistake of this opinion is precisely the definition of the law given by Malinowski while the mechanism controlled by "reciprocity" and "openness" is more of custom than the law. Thus, Bohannan revised the legal definition given by Malinowski as:

> Law is, rather, "a body of binding obligations regarded as right by one party and acknowledged as the duty by the other" which has been reinstitutionalized within 他he legal institution so that society can continue to function in an orderly manner on the basis of rules so maintained. In short, reciprocity is the basis of custom; but the law rests on the basis of this double institutionalization. Central in it is that some of the customs of some of the institutions of society are restated in such a way that they can be "applied" by an institution designed (or, at very least, utilized) specifically for that purpose… It would be better to say that legal rights have their material origins (either overtly or covertly) in the customs of nonlegal institutions but must be overtly restated for the specific purpose of enabling the legal institutions to perform their task (Bohannan 1967: 48–49).

To be clearer, in his view, the legal system has its actual origin in the customs out of legal system (either visible or internal), but these customs cannot be moved into the legal system without change. They have to go through a special conversion process to become the legal system. So his conclusion is that customs have to be developed to adapt to the law or actively reject it; the law must evolve to acclimatize itself to customs or ignore them or suppress them. However, Bohannan emphasized that the law is never a direct reflection of customs. On the contrary, it is often contradictory with the social realities. Indeed, the more developed the legal system is, the less this mismatch will be. This is not only the constant re-orientation of the initial organization but also the evolution driven by the power of legal institution. Thus, when defining the concept of law, we need a dynamic and a dialectical point of view. So, the essence of law actually shows an operation process with a standard "double institutionalization" (Bohannan 1967: 49–50).

After rationalizing the concepts and theoretical points of view above, we are very clear that the law is by no means something independent of life but a most basic element to construct life order. The legal concepts and legal acts of local people can only be understood with the understanding of their life and customs. Since the law and custom is a process of mutual penetration, the law should not be established separately from the actual folk life. Bohannan once provided a suggestion to anthropologists who wrote legal ethnography when they were thinking "what the law is". It seems that such suggestion is also the basic starting point to understand the meaning of a legal culture in the local society in nowadays. We may well quote:

> (1) First of all we must study the relationship between the social institution and the legal institution in which some of its norms are (doubly or trebly) reinstitutionalized. We must know the relationships between families and family law or between received behavior and criminal law.

(2) We must get a full range of the types of institution that fulfill legal functions, and the social situations under which each is either tried or has proved successful.
(3) We must discover which customs are reinstitutionalized into law in different social, cultural, and political situations, and in accordance with what postulates. We must examine the institutions that precede and follow from such reinstitutionalization.
(4) We must seek out situations of cross-cultural conflict resolution and examine them against a set of legal qualities. (Anthropologists have been lax here.) (Bohannan 1967: 56).

In short, law is the institutionalized part in customs, while such institutionalized laws will become part of the folk customs as time goes by. Thus, only in the dialectical relationship with folk customs, can we get a certain understanding of the law.

In this sense, customs and laws are not completely dichotomous, but a dynamic process of influencing each other. The penetration of state laws into customs always takes the standardizing of folk customs as its initial purpose. For example, for nation-state-building, marriage has been legalized forcibly and it is taking for granted that the setting of state laws can safeguard the interests of both parties in marriage. But it is hardly realized that since the spontaneous social control is completely replaced by the state law while the law itself is not able to fully recognize all customs, and some law-executors are rarely got a close supervision from the state, when marital disputes occur, one party would make use of the loopholes in state law and create property, mental and physical harm to the other party. This is clearly reflected in the divorce disputes in Chap. 6.

In this era, we should perhaps reflect on this type of questions: Must the state law be the premise of social order construction? Are state laws the unique standard of human behaviors? Can custom logic become a framework of reference for law construction?

As I mentioned in the Introduction, China is a state where state and state laws coexist. But from our discussion, we can see that in China's rural society, the authority of state law is not the only principle to construct the rural order, but one of the authorities functioning forms in the pluralistic order construction. Moreover, it can coexist with a variety of other constructive authorities in the same field of rural society. Different sounds can produce polyphonic music, which is an analogy in the study on Dostoyevsky's novel by Bakhtin. As he puts it:

> A plurality of independent and unmerged voices and consciousness, a genuine polyphony of fully vallid voices is infact the chief characteristic of Dostoevsky's novels. What unfolds in his works is not a multitude of characters and fates in a single objective world, illuminated by a single authorial consciousness; rather a plurality of consciousness, with equal rights and each with its own world, combine but are not merged in the unity of the event (Bakhtin 1998: 4–5).

In China's rural society, what we see are not pure customs or pure state laws, but a set of rules of order and symbolic system created internally. This set of rules and the symbolic system will be affected by a wider range of rules or state policy and then change its meaning and significance accordingly. For scholars emphasizing the study of disputes solution process, an effective dispute settlement not only works

through a single dimension of state law but a diverse mixture of authorities. This is a process in which social changes happen through interaction, so it can be called the "semi-autonomous social field". Thus, social field can produce rules, customs, conventions and symbolic systems internally, but is also susceptible to the damages caused by the rules, decision-making and other forces in the surrounding environment (Moore 1978: 55–56). Thus, this kind of semi-autonomous social field has its own ability to produce and operate rules while it will also be affected and invaded by the environment.

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Chapter 10
Conclusion

Emancipatory politics involves two main elements: the effort to shed shackles of the past, there by permitting a transformative attitude towards the future; and the aim of overcoming the illegitimate domination of some individuals or groups by others. The first of these objectives fosters the positive dynamic impetus of modernity.

Giddens (1991, pp. 210–211)

10.1 Village and State

Before the end of our discussion, we need to reflect on a broader penetration process of the state modern construction in rural areas. Since the disintegration of the late Qing Empire, the goal of nation-state building as a manifestation of modernity has been gradually realized in China. Through studying the history of Li Village as a research case, we can clearly know the gradual penetration process of the power of modern nation-state to rural area (Mingming 1997b) as well as the inevitable result of the aim to build an integrated modern nation-state. This penetration, however, brought an end to the self-enclosure status of Chinese villages. This analysis perspective hadn't been taken into account by many scholars except Mingming (1997a) who set a precedent in this regard. In his book *The History of Community*, he used the nation-state theory of Giddens (1985) as the theoretical framework for analysis and tried to understand the Chinese rural society under a "diverse-authorities" pattern in the process of penetration of state power into rural area through the description of the overall construction of nation-state in the late Republic of China (Xudong 1997).

Regardless of whether the nature of Chinese rural society has been changed, we are here to further note that in the penetration process of state power into civil society, general public have participated in the nation-state construction of the entire state (Johnson 1962). This is achieved through a "mass nationalism" caused by the "emancipatory politics" (Giddens 1991) which advocated saving peasants

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from the so-called "sea of bitterness" of "extreme misery". Thus, as some scholars have noted, modern Chinese nationalism is actually a "passive nationalism" (Bilik 1998, p. 22), activated by the resistance to foreign invasion (Xudong 1999a). In short, the independent and self-contained rural society of China before 1949 has ceased to exist.

Undeniably, the fundamental purpose of the "nation-state" construction advocated during the Republic of China was to replace the individual and scattered "family" by the collective and unified "state clan" and "nation" (Mingming 1996a, p. 80). However, this effort was more on paper in the initial stage. The state power controlled the rural society in an institutional sense after 1949, namely the period when the state constantly overthrew the old society. From the late 1940s when the Land Reform Movement which distributed land to individual household was carried out, to the Great Leap Forward period in the late 1950s and then the era of "collectivization", to China's rural economic reform in 1979, social organizations in rural area were similar to the organizations with "administrative system" in urban area (Lu 1993; Chen 1997; Zhang 1998).

In this social transformation process, the state tried to get peasants to accept a new set of social relationships so as to replace the so-called "feudal superstition" pedantic thinking in peasants' minds. Through constant publication, the state consciousness of an "imagined community" style was strengthened (Anderson 1991; Xudong 1999b). Of course, this transformation of rural area was not changed or stopped when the reform of China's economic system was practised in the 1980s. The state simply accepted the unique nature of rural production and subleased the state ownership of land use rights which was originally possessed and strictly controlled by the state to each peasant through the Household Contract Responsibility System. The state didn't accept the independent living style of peasant, such as the excessively complex activities in marriage ceremony and funeral. The state classified them as "feudal superstition" and strictly suppressed them (Mingming 1997a). Local folk festivals were also selectively chosen by the state to show the possibility and authentic existence of "national tradition" (Mingming 1992, pp. 232–236).

The economic reform after 1979 brought about significant improvement in material living conditions in rural China. The concept of "economic development" has become a major communicative discourse between the national administration and civil life so as to justify the legitimacy of state power. At the same time, government agencies used policies oriented to "activate cultural life and promote economic development"[1] to restore part of the folk cultural activities. In addition,

[1]In Li Village where I conducted the study, an opera stage was built 10 years ago, above which these words are hanging.

because of the frequent economic exchanges between peasants and villages as well as the publicity of traditional customs with common cultural background, the "self-awareness" of peasants was also further strengthened (Zheng 1996) so that a new type of rural social relationship was gradually taking shape.

Here we need to summarize the concept of "peasant" in the past. Cohen (1993) once clearly pointed out that in the early 20th Century in China, urban elites began to use this imported word from Japanese, *nongmin*, translated as peasant, to refer to the population in rural area. When they used this word to call villagers, the implied meaning was often negative and derogatory. "Peasants" referred to the "backwardness" and "foolishness" of villagers. Perhaps, the word "peasant" used nowadays is not inherited from ancient China but an influential discourse that occured synchronously with the concept of moderation. As Stephan Feuchtwang put it, "'peasant' is the redefinition of the agricultural population, which is both an administrative term and a self-stating term. The term is defined as a kind of backwardness but not always understood as the expression of a negative attitude" (Feuchtwang 1997, p. 2). Thus in the eyes of ordinary people, rural area became a place in need of "reform", while peasants are marked with characteristics of "feudalism", "traditionalism", "familism" and "fatalism". The ultimate goal of this transformation was to turn the so-called "traditional character" of peasant into the "modern personality" with modern ideological characteristics (Wu 1985).[2] In China's May 4th Movement, the people who advocated the New Culture Movement considered the Chinese rural area was in an uncivilized state, so they tried to apply the reforms in city to rural area, which became "a site for political reform and model promotion" (Feuchtwang 1997b, p. 3). The Education for the Masses Movement in the 1920s to 1930s in rural area of North China was implemented with support from such a notion and was carried out vigorously. The movement leader Yan Yangchu considered that peasants generally had four

[2]Under the overall objective of "ruled by law", a number of scholars are trying to deduce a way to transform people's ideas from the academic perspective. It is most notable that some scholars advocating Chinese modernization theories think naively that when people's ideas are changed into modern indicators as they imagine, China's modernization will be realized. For the construction of the "ruled by law" in China, Zhang Zhuo advocated that Chinese people should have "modern legal awareness and rational spirit". Only in this way, could China's legal modernization be achieved. As he said: "A modern legal society doesn't only set up a comprehensive legislation and legal authority. More importantly, it requires citizens to form modern legal awareness and rational spirit gradually in the process of socialization. Only when legal awareness has really penetrated into people's heart, can they consciously act in accordance with the law and deal with issues rationally" (Zhang 1992, p. 113).

disadvantages including "ignorance", "poverty", "frailness" and "lack of public spirit",[3] so the purpose of education was to do spirit "baptism" to peasants in these four aspects (Fairbank and Feuerwerker 1986).[4]

[3]These are four characteristics of rural China in the 1930s summarized by the Chinese rural reformism while different reformists call them differently. For example, "Dingxianping Church" considered it as "stupid", "poor", "weak" and "private"; "the National Association of Vocational Education of China" called it "poor", "stupid", "weak" and "loose"; "Zouping Institute of Rural Reconstruction" summarized these four points as one: the backwardness and confusion of Chinese rural area is due to "the recession of the essence of inherent feudal ethical code" (Yefang 1983, p. 245).

[4]In a certain sense, "rural area" and "peasant" have been marginalized by ordinary people and even scholars, so they are pushed out of vision. In their discourse narrative system, rural area is still a place that needs transformation by the state economic elites and the power elites. In a series of studies on the so-called "Chinese civil society", in order to reconstruct a theoretical system in the Western sense, Deng Zhenglai wittingly or unwittingly, excluded China's rural areas and peasants from the field of Chinese civil society defined by him (1997). In his definition, a possible cultural hegemony implied (Gramsci 1979) was that the living field of Chinese peasants who accounted for more than 85% of the total population wasn't the basis for the construction of civil society in China while it was precisely the cities occupied by intellectuals or economic elites that had constructed the civil society. Isn't this the logic in contradiction with an explanation paradox of the idea of "mass society" deep in the civil society? Deng Zhenglai defined Chinese "civil society" in this way: "The Chinese civil society is composed of independent individuals, groups, communities and interest groups which doesn't include public officials, ruling Party organizations, military and police performing government functions with the identity of 'national politicians' or the self-sufficient pure peasants completely dependent on the land. In Chinese civil society, entrepreneurs and intellectuals are the backbone, because entrepreneurs are the major force of construction, development and improvement of the market economy. In market trading activities, entrepreneurs follow the contract rules, safeguard self-interests instinctively and treat others interests equally, so that they are carrying forward the equal contract spirit. Entrepreneurs know profoundly the importance of the negative side of freedom (free from external forces and from confusion of social chaos and disorders) in market economic activities, so that they are major power to maintain public order and civil society. Entrepreneurs hold substantial financial and material resources as the major state tax payers so that they are able to influence the national decision-making. The economic strength and status owned by entrepreneurs enable them to play a leading role in organizing and supporting various groups, associations and interest groups so that they are the leading strength of civil society organization. Chinese intellectuals generally have modern awareness and modern knowledge. Because of differentiation of social structure, some intellectuals change their roles and join in entrepreneurs actively, becoming the backbone power of guiding the healthy development of economy. Intellectuals staying out of the field of economic activities play an irreplaceable role in the education, enlightenment, culture construction, research, theoretical guidance, etc., so that they are intellectual sources and power resources to promote and lead the healthy development of civil social economy" (Deng 1997, pp. 6–7). From the perspective of history and etymology of political scientists, we can know that the concept of the so-called "civil society" actually refers to the "autonomous city commune" of ancient Greek city-states and that of the Western later Middle Ages. In this society, the concept of "citizen" and "bourgeois" are the core (Chaohui 1994). Weber once claimed that "the ancient Western civilization by its very nature is essentially urban civilization" (Weber 1997a, b, p. 5). Therefore, the so-called Western "civil society" developing from urban civilization excluded peasants at the very beginning. If we only want to duplicate a Utopia of "civil society" in theory proposed by Western theorists, this is understandable. But the thinking error formed in the development of China which lasted for nearly a century was that due to the space-time conversion (Said 1983) and promotion from elites,

At the same time, rural customs were classified as "feudal superstition" to be abolished.[5] For example, the custom to adopt a relative's son as the heir for the succession of family, a rule of the heir inheritance system in Qing Dynasty, was eliminated through the establishment of responding civil law in the Republic of China. Previously, it was recognized by the law of Qing Dynasty if the family had no son. According to the custom, the order of adoption was in accordance with the closeness of the patriarchal relationship. If no successor could be found in the circle, distant relatives would be chosen as inheritor. But with a history of thousands of years, this family heir inheritance system was "abolished completely" by the state law at that time, which was considered as "surely a joyful thing in law" by the scholars (Gao 1946, pp. 84–85).

Based on this type of investigation, when we emphasize the significance of anthropological field research methodology, we should be aware of its limitations, which is the loss of historical clue. As a result, in addition to the microscopic fieldwork, we should also consider the interactive process between law and custom in the penetration of state power into rural area. This is the basic reason why I examine the change of power pattern from the perspective of village history, because the dispute settlement based on various authorities and the growth of rural legal customs cannot be explained independently without consideration of this dimension.[6] The overall academic change is within this scope. In other words,

theories were often incorporated into the construction of national ideology, and implemented as a guidance of practical activities such as national administration and policy-making. But the final result of practice showed that theories were more likely to be a debate in academic sense instead of the only basis of people's action. What we are here again to discuss is whether Chinese rural is within the civil society. In this regard, British Sinology anthropologist Stephan Feuchtwang has proposed a question of whether Chinese rural area should be a field of the civil society and democracy through the investigation into the Dragon Temple Fair in Fanzhuang Village which is only 6 *li* from Li Village. As he put it: "Temple fair is this peasant tradition a system of Chinese peasant civil society? Are there any other systems? Does it have the potential for bewing the communication channels with the state? Does it have a base material of rural civil society?" (Feuchtwang 1997b, p. 15). He has given certain affirmation of such kind of problem in his exquisite analysis of the ritual symbolic significance and organizational mode of Dragons Temple Fair. Such evidence showed that Chinese rural area should no longer be excluded from the academic mainstream thinking while a deeper study would be a possible way of solving the above problem.

[5]One of the research focuses of Zhu Yong on the clan customary law in Qing Dynasty presupposed that all clan laws of Qing Dynasty actually belonged to feudalism. Even at the time of Republic of China, the so-called "civic awareness" that matched the modern "democratic political system" hadn't appeared yet. His preconception in the evaluation of clan law was actually a one-dimensional way of thinking, because he had ignored the functional significance of clan community. So he considered the revival of modern clan organization as "ideological remnants of feudalism" (Yong 1987, p. 137), but the actual situation was more complex than this summary.

[6]From many studies on the customary law of different ethnic groups except the Han, it was more likely to see the opposition between the customary law and the state law (Xuehui 1998) with little regard for the interaction or mutual invention process between the transformation of the customary law within a particular ethnic group by the state law and the recognition of the customary law in the legal practice of state law.

influenced by the Western progressive enlightenment concept, the optimistic exotic obsession in anthropology has turned into a solitary reflection today (Mingming 2000). The core of this reflection is mainly on the mutual influence and co-development of history and power. On this basis, law is no longer a naturally existing system and its rationality should be an evolving process. The motivation driving this evolution is perhaps the pursuit of a harmonious relationship between legal knowledge and the efficiency[7] of settling practical disputes.

10.2 Knowledge and Efficiency

It is the general idea of American anthropologist Geertz (1983) to consider law as a kind of knowledge as well as a kind of local knowledge Zhiping (1994) proposed to think of "law as a culture" by borrowing Geertz's concept of "local knowledge". From his later essays, we can see the impact of interpretive anthropology on him. He insisted that, in the current construction of Chinese legal system, legal research should get rid of the legal tradition in favor of the state law annotation and concern about the real society as well as the subjects of mutual interests by legal and other disciplines. (Sicheng 1998) Li (1998b) addressed a fundamental question, which is the village cadres with the knowledge of state law operation have the ability to either strengthen or weaken the operation of state power in rural area. Thus, similar to Liang Zhiping's opinion, he believed that two different knowledge systems are

[7]The "efficiency" discussed here actually refers to the effectiveness of the plan to restore social order by the mediator in disputes resolution. In other words, in rural area, the mediator is responsible for mediation and judgment, who hopes to find a very effective way to restore the rural social order as quickly as possible. Liu Zhenyun implied this point in his writing describing how a village head settled a variety of disputes in the late Qing Dynasty and in the early Republic of China in North China. He described one old-style village head in the novel *Headman*, who came up with the idea of "closing well" and "dying hair" to punish people who disturbed the order in rural community. I would like to show you some details as evidence: "… There was an adultery case in the village. In Sangliutang, a man surnamed Jin had an affair with the wife of Mr. Wang. With tin trumpet shouting loud, villagers asked the village head to make a judge…. But he had never dealt with this kind of affair … . Finally, Lu Cunding came up with an idea that when such bad things happened, in addition to the penalty of sorghum, 'closing well' could be implemented: the men and women caught were not allowed to get water from the well for seven days … . The men and women would be comfortable only for a while but suffered from dry and thirsty mouth for seven days, shameful and poor. They would also affect the families of both sides. Of course, since the implementation of 'closing well', men and women in the village have been mannered … . There were constant thefts in the village. Sometimes family Zhang lost their pig while the other time family Li lost their chicken. The village head was very upset and invented the "dying hair" system: dye the hair of all pigs and dogs in the village with different colors according to different families. Then patriarchs were asked to have a meeting, eating hot cakes and announcing the implementation of this system. It is now clear. Pigs and dogs from different families are differentiable: the colorful pigs and dogs walk in the street orderly and safely. Everyone feels at ease while the village head is very pleased. Walking in the street, at the sight of any pig or dog, he will say: 'How can you be in a mess again!'" (Zhenyun 1992, pp. 148–150).

revealed in the power structure of using rural elites to bridge state power rules and rural needs.

Through "spreading law to the countryside" and "sending law to the door", the state injects a set of state legal concepts in civil society. In this process, a set of knowledge system of state law has been shown (Zhenyun 1997). As people have seen, peasants living in rural area actually have little concern about the publicity by the state in this regard, because this kind of publicity doesn't have anything to do with their real life that they care about. But it would be wrong to assume that they do not appeal to the state law. When facing actual disputes, they first appeal to institutionalized channels of disputes resolution such as village and town court. They try to comprehend the new contradictions and problems by applying the conventions and rules they are familiar with. They make the principle of reciprocity work through innovative application of various social relation skills and practices. Thereby, the state legal system which looks like an iron plate loses its efficiency and the difficult situation of "failure to observe the law" emerges. As rural villagers generally feel, law is like an "active lock", which can be moved up and down and keeps changing" (Zhang 1998, p. 153).

Li (1998b) subtly pointed out in his study that due to the traditional knowledge of custom, rural society had become an "iron plate", so it was actually impossible for the state power to penetrate into rural society; and the former was actually extremely weak. However, in the study of the actual resolution process of rural disputes, we find that in the integration of the institutionalized state power with the non-institutionalized authorities in civil society, the state power has been gradually transformed into part of the local life. "Sending law to the door" or "opening a court session on a heatable brick bed (at home)" are forms of disputes resolution created for the integration of the institutionalized state court authority and folk customs. These forms can be practiced because the two forces are clearly aware that the only possible consensus between each other is to solve conflict as soon as possible. Thus there are compromises or concessions on the principles of disputes settlement. Obviously, teleology has defeated instrumentalism in these cases.

It couldn't be denied that after 1949, the state power was unprecedentedly strengthened in rural area, making the rural community to be protected and controlled by the state power. This power structure of grand unification had become part of the history, but it remained clearly in the memory of local people[8] in the

[8]In Li Village, people often worship Mao Zedong, leader of the Chinese revolution, as a God and place him with other gods. In another village I studied, Mao's portrait was enshrined in a ritual shed set for the Dragon-tablet Temple Fair on the February 2nd of lunar calendar each year where worship activities were very prosperous. In Li Village, when I asked the locals for their understanding of Mao Zedong and reasons they worshiped him as an idol, they answered: "We must worship Chairman Mao because he feed us. Moreover, he is the Great God because when he was alive, all gods were intimidated by him and when he was gone, various other monsters dared to come out." In such a folk interpretation, not only is the eradication of folk customs in the past by the state power reasonable in history, but also the revival of civil society culture in modern times. When I revisited Li Village for annual temple affair in 2001, I found that villagers had put Chairman Mao's portrait on the plaque with three characters of *Zhangyemiao*. According to

form of rationalized explanation. As I presented in the previous text, the Chinese economic reform in rural area after the 1980s gradually turned the state pattern dominated by single power into a pattern that various authorities competed in the same social network. Thus, the weakened state law in rural area on the surface was the direct reflection of the pluralistic authority pattern, which meant the state power became one of the components in the pluralistic pattern of rural society. Its dominant power was transferred to other forms of authority so that the state power seemed to be weakened in rural area. Maybe we should not consider the double-face of village cadres discovered by Li (1998b) as the evidence of state law's failure in penetrating into rural society, because they were just spokesmen of a particular form of authority. Perhaps it would be more meaningful to see that the double-face of village cadres may not have disrupted the rural order, but work to ease rigid clashes and conflicts.

Xiaotong (1985) once expressed in *From the Soil* that power could be divided into two kinds in the power structure of Chinese grassroots society. One was "brutal power" that was compulsory, the other was "agreed power" that was mutually adherent to the contract. In short, the state lay in ruling, while the society relied on contract. Schurmann (1966) had a similar view that the upper authority of China was more willing to control the civil society rather than manage it. Beyond the state control, the society was an autonomous organization. Therefore, we can say the state and the society of China was "a state of political action and a grassroots society with political inaction, both have a tendency to separate from each other" (Zhang 1998, p. 154).

When the state attempted to implement a set of policies in rural society, the grassroots community would adjust them flexibly to their condition. In the previous sections, the concrete implementation of family planning policy and policy reforms of funeral in rural area can prove this. All compulsory policies and regulations regardless of the receptivity of civil society would be out of shape in the grassroots. As the metaphor frequently used by villagers, the central government is the hot water with 100°, but it is likely to end up with ten degrees after passing through the bureaucratic tubes with all kinds of twists and turns. We can assert that the retained concepts in rural society from the state ideology are in fact a reconstruction after the redefinition of the conventions and principles inherent in rural society.

It cannot be ignored that as the state power penetrated into rural society on a large scale after 1949, the law of state has been transformed by inherent rural culture and functioned in the form accepted by the locals. As the peasant economy with "involution" has no economic growth in the true sense (Huang 1994), the legal system constructed by the state in accordance with the so-called "modern legal concepts" cannot function independently without the "cultural network" of rural society due to the entanglement with the inherent rural culture (Duara 1988).

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villagers, people from town office had came to dismantle the temple last year but failed. It was Mao's portrait that prevented them to do that.

Clearly, in the "cultural network" or the network of social life, the rigid principles of state law became resources that everyone fought over for their personal interests. Thus, even if the state developed more laws, they would be neglected eventually because they were of no actual operational efficiency. Take the Household Contract Responsibility System in rural area for example. After land was divided into a number of small pieces, people might abandon mechanized tractors and use shoulder and human labors, because there was no need of the machine power. The practice of law is the same. When the state insisted to appear as a "modern state rule by law", efforts of legislation might reduce the efficiency of order maintenance in rural area.

Sun Yat-sen who emphasized to replace "family" with "state clan" proposed his idea of judicial reform of China based on his own observation of the inhuman and dark nature of Chinese judicial system in the late Qing Dynasty. In his words, we see the following social phenomenon. Law enforcement officials used lynches and accepted bribes,[9] and they allowed the robbers to rob and extort the property. Some local administrative and judicial officials extorted excessive taxes and levies on the public to fill their own pockets. He cited a typical case to illustrate the actual operation of the legal system in the late Qing Dynasty and villagers' reactions due to their disappointment. This case happened in the late Qing Dynasty in Macao, where the social order which was originally in peace became chaotic due to the involvement of officials. At last, the government was not able to control this chaos, so the villagers had to organize themselves and abandon the law of Qing Empire which was of no use at all. Here it is necessary to directly quote his words as evidence:

> There are several villages near Macau, which were previously subject to highwaymen wandering between urban and rural area. After they were captured, all villages would pool money and send gifts as bribery, pleading the county magistrate Xiangshan County for trial. When the official drained both the villagers and families of the criminals, criminals would always run away. With large amount of money and strength, the villagers failed to stop robbery. Finally, the villagers agreed that for any criminal caught in the future, they would not go through any trial or denounce to the local authority but bury them alive immediately. If they execute the robbers, officials might get the chance to punish the executioner or

[9]Recently I occasionally read a prisoner's diary in the third year of the Republic of China (1914) in Shandong Province, which provided detailed records of the whole process from arrest, trial to release. It is extremely interesting to see that situations in this diary of the Republic of China are similar to the judicial corruption and abuse of cruel torture in the late Qing Dynasty witnessed by Sun Yat-sen. As he wrote in his diary: "The next day, on March 17th, after breakfast, it was the second arraignment. The law enforcement officer asked: 'Wang Changqing wanted to escape and how did you come to his aid? Shouguang was independent and how did you contact with the members? Tell me the truth.' I said: 'I really didn't know anything about these.' The officer said: 'No pain, no confession.' He shouted loudly: 'Beat him!' Soldiers around me took off my jacket, twisted me to make me kneel on the ground and slashed my back with a whip for 80 times, I didn't confess. The officer ordered another 80 heavy whips, but I still kept silence. The officer said: 'Another 40.' Others responded: 'He cannot stand anymore. Beat him the other day.' The officer asked: 'Do you blame me for beating you?' I said: 'It is the rule of law enforcement, so nobody is to blame.' Then the arraignment was finished" (Huapu 1958, p. 306).

> racketeer. But robbers are unfamiliar outsiders, if they are buried alive immediately and secretly, it is indeed an intelligent idea. Although it is certainly a big threat to the innocent passersby, this approach fights against highwaymen effectively. Today, highway robbery seldom happens in the vicinity of Macao. (Yat-sen 1984, p. 9)

The text above describes the judicial situation almost a hundred years ago in southern rural China. In such a case description, at least two things are worthy of our attention: First, it is undeniable that people initially agreed with the state laws. But the law enforcement officers abused the power of law so its efficiency in actual operation was minimized. Then the villagers privately organized and set up rules to punish rural robbers in order to replace the invalid state laws after they felt extremely disappointed about its impartiality. Thus, officers would not benefit from legal disputes in court while the civil society could return to peace quickly, which was to kill two birds with one stone.

It should also be noted that the cases a hundred years ago cited by Sun Yat-sen to advocate judicial reform still exist in rural area nowadays. In the previous text, I have already pointed out that the state power has become a resource that can be exchanged with the civil society in diverse power patterns. Judges would side with the people who have given them gifts and modify the facts while the state only extract national revenue from rural area without paying back anything to the people in rural area, so villagers have to find ways to resist including working in other places or bribing township officials for reduction or remission of taxes. Some of them even refuse to pay the tax as the last resort.

In short, a hundred years later, we can still see the shadow of law operation as how it had been a hundred years before. This forces us to further reflect that what is the true meaning behind such Western concepts as "modernity" or "modernization" directly related to the goal of "reform"? Because the whole China's modern history is a history of pursuing modernity or modernization aggressively (Xu and Chen 1995; Luo 1990, 1993; Jin 1995; Mingming 1996b; Rozman 1998). It is the overall goal of legal construction to include the economic development of the state into the so-called construction of "modern state of law" which is "ruled by law" rather than "ruled by man" (Liang 1997).

After a hundred years of efforts, especially after 1949, the structure of Chinese society has undergone substantial changes (Sun et al. 1994; Li 1998). But if such changes in social structure due to the progressive realization of the goals of modernity are authentic, then in the so-called modern China, why can we still find the judicial operation form over a hundred years ago when China was at the start of modernization? This perhaps is worthy of our reflection.

10.3 Law and Happiness

Under the consciousness of such problem, we need to renew some theoretical thinking related to modernity. In this regard, the British sociologist Anthony Giddens (1990, 1991) once criticized the theories of modernity put forward by his

predecessors and gave his own understanding. He discussed the issue of traditional society and modern society under the framework of classical sociology and distinguished modernity and tradition with the concept of "discontinuity". That means there is a clear break between the modern society and traditional society, so forms in the modern society cannot be found in the traditional society, such as the political system of nation-state and the thorough commercialization of product and paid labor (Giddens 1990, p. 6).

According to the theory of Giddens (1990), in modern society, people implement the alienation mechanism of social relationship by the so-called "expert system". In the growth of the modern nation-state, it is often hoped that the improved state law can ease the discordance between people. National legislation has become an expert system of jurist research. As a result, rules which were to maintain order in everyday life are extracted from the scene of life and become part of the state power operation. But they are external to people's real lives. Such an expert system can be accepted by the locals because it claims to bring liberation to the world, especially the liberation towards "a well-off life". This emancipatory politics has engaged people voluntarily to this expert system arranged by the state through making promises to the world (Giddens 1991).

People advocating legal modernity in China have the same logic. They promise the world that only if the legal system is improved, will the society have order and the economy have a rapid development. But behind this commitment, there is actually a set of legal rules distant from people's life which is conceived by legal experts. Although this set of rules is very charming and open on the surface, it is not as efficient as the inherent rules in maintaining order in folk customs, which can be illustrated by the real case provided by Sun Yat-sen a hundred years ago.

Skinner (1984), behaviorist and psychologist, pointed out in *Beyond Freedom and Dignity* that the so-called "freedom" and "dignity" advocated by humanist were nothing but an imaginary illusion. In his view, our actions were actually limited by different systems or cultures of society, so freedom was unlikely to exist so that the so-called human dignity associated with freedom was groundless. Based on the above premise, I try to give another explanation to *Beyond Freedom and Dignity*. In fact, when we are so fascinated to believe such discourses as "freedom" and "dignity", we find ourselves helpless in real life. After reflection, we will be surprised to find that the common commitment behind both totally westernized model of modernity and the new order of modernity constructed by Chinese culture (Jin 1995) is to liberate ourselves truly. But this promise is nothing more than a stimulus of temptation so as to make us press the lever to get the stimulus like the mouse in the Skinner Box. Thus, although we become more satisfied with our need, this kind of need is also manipulated, making freedom become an illusion.

The issue of legal construction seems to have a similar principle. When we require order for freedom, we will find out that this order is essentially a form of domination; but when we try to oppose this order of domination, we will find that our freedom doesn't have any guarantee. This is perhaps the dilemma of our modern culture, instead of the legal construction alone.

After the deconstruction of legal modernity, we can understand the practical implications of its discourse. Maybe we can do the analysis that in the process of nation-state building, the state tries to pull people's lives into the whole process of this building by an idealized promise of liberating people.[10] In the concepts of state, an underlying logic considers rural area as a backward place without any implementation of laws, so it is a society out of order with low quality of life. The bias against the peasants is that peasants live unhappily and they need "poverty alleviation", "sending law to the countryside" and "sending science and technology to the countryside" by the state departments in order to make "progress" in the rural areas and enable people to live well-off and happily. But the question comes: are peasant's living conditions really so bad? If you can get into the real life of peasants, it is not hard to figure out the answer.

In fact, peasants have their own view of what happiness is. Howevere, since this concept is constantly affected by the state ideology, it also gradually changes peasants' own understanding of happiness. Mingming (1998) recently has a thorough discussion about the "happiness" concept of Chinese peasants, he also explored into the localization concept of Chinese people from the perspectives of ideology at a deep and general psychological level and through post-structuralism. I personally think that by taking the concept of *fu* (blessing, happiness) of Chinese people as the main body of analysis, the presumption of Wang Mingming's epistemology is relatively clear, which is to try to reconstruct the local social science through analyzing the local concept of Chinese society. But on the other hand, we can also understand the meaning of this issue from an ideological perspective.[11]

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[10]This is particularly reflected in the economic goals of China to construct an overall "well-off" society in rural areas. It seems to the state that the way out for rural areas is to build a well-off society, and the core meaning of "well-off" is to enable peasants to live a wealthy and happy life. I do not intend to an in-depth discussion of the "well-off" issue. The difference in understanding of "happiness" between the state and local community behind the construction of the "well-off" society should be paid attention to in order to review the intervention and transformation of rural life by the state. In a sense, the target of "well-off" society actually become the administrative burden of county government when it came to the grassroots level, which ultimately passed on to peasants, resulting in the failure of making ends meet and the incessant complain of rural peasants.

[11]Wang Mingming didn't consider "blessing" as something purely related to personal feelings like the "feeling of hot and cold", but as an existence of the so-called "social ontology". In this regard, any explanation of this term actually means the concept of "blessing" of Chinese people is both a personal feeling and a social constraint. As the text mentions: "It can be observed that 'blessing' not only constitutes the ideal and expectation of individual pleasure, but also includes specific social rules and the cultural concept, so I'm willing to take it as a kind of 'social ontology'" (Mingming 1998, p. 25). The concept of "blessing" here has become a link between oneself and society just as the tie between "us" and "them" as Bauman (1990) mentioned. Inner happiness is often reflected in human practices through the discourse of "blessing" (Bourdieu 1977). And it is precisely the typical situation that with the concept of "blessing" will be the inter-subjectivity between me and others, namely mutual intelligibility. Such a method to analyze the concept of "blessing" in the environment of people's practice is the anthropology replica called by Marx to criticize Feuerbach's philosophy. Marx said: "The chief defect of all hitherto existing materialism (that of Feuerbach included) is that the thing, reality, sensuousness, is conceived only in the form

In this regard, we must mention Marx's theory about the ideology of happiness again. As Marx keenly observed, people produced a variety of concepts about the world or society for themselves. Once these concepts became symbols circulating in people's life, they may have the capacity to dominate human behaviors. Marx put forward his key findings in "illusory happiness". This "happiness" is not clearly felt by individuals but exists as a kind of ideological control.[12]

In a general sense, what mankind has created is an illusory sense of happiness, which in turn has a dominant force. Isn't the concept of happiness a false concept? As the relationship between modernity and political liberation by Giddens (1991) mentioned above, we can thus infer that all propositions of political economy related to happiness along with industrialization or modernity are called "emancipatory politics" by Giddens.[13] However, the goal to "liberate" the "oppressed" was not realized ultimately while the historical cycle dominated by the new cultural hegemony couldn't be escaped, which became the tool to dominate the others' lives by a new group of cultural elites (Gramsci 1979). After this "emancipatory" political economy vanished, people started to recreate the concept system of "happiness".[14]

Although, when Wang Mingming conducted the cultural comparison of the concept of *Fu*, he had taken into account the "hedonism" of "happiness" in the Enlightenment of the Western society, which was different from the inter-personal part of "blessing" used in the Chinese society. In conclusion, he praised the

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of the object or of contemplation, but not as sensuous human activity, practice, not subjectively" (Marx 1988, p. 87).

[12]Marx and Engels put it: "Hitherto men have constantly made up for themselves false conceptions about themselves, about what they are and what they ought to be. They have arranged their relationships according to their ideas of God, of normal man, etc. The phantoms of their brains have got out of their hands. They, the creators, have bowed down before their creations" (Marx and Engels 1988, p. 1).

[13]Marx and Engels had the following statement concerning the concept of liberation: "Let us liberate them from the chimeras, the ideas, dogmas, imaginary beings under the yoke of which they are pining away. Let us revolt against the rule of thoughts" (1988, p. 1).

[14]Admittedly, it is the media that plays a vital role in shaping the concept system of "what is happiness". Through the media, a new form of happiness—the political economy symbol has replaced the original political economy of struggle (Baudrillard 1981, p. 1). The concept of "seeking happiness for mankind" has been replaced by the postmodern concept of happiness of "consuming body" (Falk 1994; Featherstone 1991). The media is shaping the symbol of "happiness" and imposing such false notion of happiness to daily consumer goods. When you buy a good printed "Fortune", the so-called enjoyable "state of happiness" in "getting together with families" imposed on you by the "symbolic power" on television will appear in your mind, so that you will consider it as happiness. But you hardly recognize that you are firmly in control of the symbolic violence shaped by the media (Bourdieu 1991).

functional significance of "blessing" in the Chinese society with the harmony between man and society. But it seemed that he didn't mention the domination of human life by *Fu* as an "illusory consciousness".[15] He said:

[15]Mingming (1998) emphasized on Marx's theory of "happiness" and had a more unique application of the theory of "happiness" of Foucault, especially in the issue related to "self". In Foucault's logic, it relied on the development of "technology of self" to obtain happiness, with which a "self-power" could be realized (Foucault 1988). Reflecting on China's social life, we will clearly feel that although Chinese have a strong sense of "self-power", the sense of this power doesn't play a dominant role in everyday life. It can be said that Chinese do not completely consider the realization of self-power as the ultimate value of life care while they should take into account the restriction and exclusion of such power by the society. In rural area of China, complex social relationship enables people to acquire characters such as tolerance and constraint because parents often tell their children "disadvantage is a blessing" as the way of social life. "Disadvantage" is a loss of power, the failure of "self-technology" in Foucault's theory. Thus, at least in Chinese people's minds, even without the personal capacity of "self-technology" as Foucault said, "happiness" is still available. A reasonable inference drawn therefrom is that people without "self-technology" or access to social resources can also be considered as very "blessed" by the local community. The prototype of the "God of Longevity" in Chinese cultural symbol system is carefree folks with average ability, who do not necessarily have any "self-technology" and power but one of the idols worshiped by people. The core meaning of "appearance showing blessing" doesn't refer to the ability of "self-technology" but the "natural" look of a person. As an old saying goes, "a full heaven (forehead), a round land (underjaw)", which imposes the social meaning of "blessing" to a certain individual or a certain kind of human by a natural cosmology. Therefore, for Chinese people, the concept of "blessing" is justified by the outside standard rather than the internal psychological feelings. It is not based on the subjective experience but the external concrete existence including the body, as the measuring standard of people's happiness. Concerning the concept of happiness, people are willing to relate happiness to their physical characteristics. For example, when an old man is considered "blessed", he should be "blind and deaf, but with good appetite". Through sense organs such as "vision", "listening" and "taste" of the body, it is hoped to reflect the personal understanding of happiness. And it is this description of physical characteristics that makes people understand the concept of "blessing": "invisible to unpleasant scene, deaf to the irritated bustle, while accessible to the best food in the world", this simple and intuitional "blessing" is the reason for it being the social semantics foundation. The Chinese character "福 (blessing)" is a phonogram in Chinese language. The left part of the character shows its meaning while the right part shows the pronunciation. The left part was written as "示" in old style, meaning "pleading", which means to plead a blessing from God in ceremony. Although the critical interpretation of ancient texts cannot fully cover real life, it can provide a basis for conceptual analysis. In a certain sense, in the eyes of Chinese, blessing is external, which needs to be pled by people, or "blessing" is shown on human's body. As the study of Martin (Ahern 1981) of communication between man and the God, "pleading" is very important. The so-called "granting whatever is requested" is the modern version of the old-fashioned concept of "blessing". In addition, in Chinese, expressions like "blessing comes", "riding the high tide of luck" and "good fortune" also have this "blessing" concept outside the people. It might be doubtful to judge whether this externalized concept of "blessing" can be translated equivalently with "happiness", the English word rich in subjective experience found by the author. The consequent cultural misunderstanding may cause the total loss of the local meaning of "blessing". The concept of "blessing" has the above externalities for people, which resembles the gift exchange put forward by Mauss (1967) when circulating among people. "Blessing" as a gift is entirely a gift in symbolic sense. It is more likely attached to specific gift to someone. When a person sends blessing to others (equivalent to giving gifts), the receiver is included in a mutual relationship and repays at the appropriate time. It is necessary to reiterate that "blessing" is not a personal experience and self-power, but it should be more of a "compulsory" power control imposed by the society. The old in Li Village mostly live a life not as good as young people, but they

> The utilitarian definition of "happiness" cannot describe the polysemy of Fu used by Chinese people. Different from the utilitarian concept, it doesn't separate the individual's satisfaction from non-personal factors, or "happiness" (cohesion, harmony) of group and system. In addition, the use of the concept of happiness is often related to such words as blessing, pneuma, spirit or life, fate, luck and physiognomy, and it always shows a reconciliation of personal happiness, fate, family and relative continuity of community and supernatural pleasure. (Mingming 1998, p. 25)

However, the seemingly peaceful concept *Fu* is more of a "placebo" to make people forget troubles and tribulations and can be seen as a kind of "shield" from living conditions including "suffering", "anxiety", "resistance", "dissatisfaction" and "unfairness" (Heidegger 1962, 1987). In a certain sense, vocabularies related to "blessing" constitute a symbolic "discourse ceremony system" (Dirks 1994). If it has any function, it is his capability of resolving difficulties and misfortunes encountered in life. By the ritualization of discourse *Fu*, the benign order of a society can be established and consolidated. All misfortunes are attributed to "having no blessing" and ascribed to "fate" in order to achieve harmony, and thus we would say *Fu* is a "shelter" that makes people live in the illusory shadow and gradually become manipulated by the concept of society in this shadow. Life itself or practice is a kind of "unveiling" the truth, which allows people to see the "nothingness" of *Fu* under the light so that people will have a new understanding of life.[16]

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receive blessings in holidays, and people in the village consider the old deserved this good fortune. But many old people themselves do not think so. They often tease themselves: "It is my good fortune when children have the ideas of sending me blessings!" In fact, when old people receive blessings, they are actually telling others that there is some kind of relationship between "me" and "him", such as parent-child relationship, neighborhood relationship and family relationship.

[16]The concept of happiness is actually a process of interaction between the state ideology and cultural practices of the people. Sapir (1934) considered that culture was merely something gradually discovered during the exploration by the members of a society. This is just what Thompson summarized after the study on the British working class: people manufacture their ideas and ideologies in constraint of changing social organization (Thompson 1963, p. 9). As a pioneer of cultural studies, Williams developed a similar view that culture and ideology were a kind of work and they had some common grounds with the society of commodity production since the reproduction of cultural meaning was also a specific procedure (Williams 1977, p. 9). If the idea of happiness is recognized as a component of culture, its true meaning cannot be understood without association to the social process. It is actually a new meaning after the reinterpretation on people through the advocacy of the whole modern ideology. Thus, Weller regarded culture as a pragmatic interpretation and re-interpretation process without strong institutionalized characters, nor strong ideology characters (Weller 1987, p. 7). If we interpret the concept of happiness with such "pragmatic" point of view, it seems that people's life is calm and independent without the external control of cultural hegemony. However, Williams was opposed to this view. He thought it was more of the "emotional structure" organized by ideological thinking. "Structures of felling can be defined as social experiences in solution, as distance from other social semantic formations which have been precipitated and are more evidently and more immediately available" (Williams 1977, pp. 133–134). The pragmatic explanations (dissolved one) are not as clearly as the precipitated ideology and they are linked with a particular system instead of the daily social relationship. However, both ideologicalization and pragmatic explanations are still manufacturing the meaning rather than a pre-determined password used for thinking.

In short, as a concept in the society, the function of *Fu* should not be limited to individual's technique in pursuit of happiness. The concept of "happiness" itself is a product of society. It is more likely to be a technology created by people for society's self-control, through which a modern political myth is constructed (Cassirer 1999) in order to realize the imagination as a community.

10.4 Summary

After the description and theoretical discussion of the field data above, my conclusions are as follows:

First, with the disintegration of the traditional imperial political system, the modern nation-state construction of China rose in full swing. A distinct feature of this construction is that the state power constantly penetrates to the grassroots rural society. This penetration has broken the fundamental principles to maintain orders based on the inherent justice concept of differential modes in Chinese rural society and also affected the basic principle which restored the initial reciprocity relationship to solve disputes.

Second, as the development of national economy became the leading goal of the modern construction of the whole state and as the unified ideology control in politics was gradually dispelled, the rural power structure has become diversified and thus the diverse operation pattern of rural politics has emerged. The appearance of this diverse power pattern makes the settlement of civil disputes rely not only on customs, conventions, or state laws, but the joint force of a variety of authority and power.

Again, after the 1980s, the revival of Chinese rural folk religion hasn't only showed the actual function of civil religion in the life of local people but also reflected the change of state power from the centralized authority pattern of rural area. In this transformation, the villagers consider village temples as places to eliminate or predict risks or to solve disputes. Through the village union organization of temple, the reciprocity principle of local social interaction was reproduced. The incense ceremony in village temple in fact is not only the God's judgment but also a reflection of the universe ideology of local people.

What is more, in the cultural context of rural society, the abstract idea of justice is implemented based on the differential modes of human relationship. People's judge on whether an act is just is according to the relationship distance, which can be called the principle of justice based on this type of reciprocity.

Finally, as one aspect of the state modernization, modern legal system construction is actually a proposal rooted in the pursuit of modernity by the state. In particular era, the pursuit of legal modernity is inevitable related to the market economic development of the state and they have to demonstrate the legitimacy of their existence by each other. But the efficiency of legal system is inseparable from the customary life of civil society and local culture.

The four conclusions above are my understandings from a general survey in a common village of North China. The detailed study on such a small case can at least provide a little more knowledge of the true meaning of the legal operation in rural area. From the independence and externality characteristics of law, the law in rural society cannot be called law, because it doesn't have the judiciary independence in the Western legal concepts. But from the construction of rural social order, we can refer to all the principles used to construct the rural social order as law. This is actually a process of gradually changing strategies or double institutionalization in which new problems are solved based on the inherent principles and new orders are put forward when new confusions happen.

In the text above, I have analyzed only the literature and field data of a village with the focus on the interaction between state legal institutions and folk customs. In the description, I only focus on the penetration process of state power to civil society, but I do not devote too much attention to how customs penetrate into state power systems, or how they survive. This is what the future studies should supplement and continue to explore.

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Afterword

Counting on my fingers, it has been nearly five years since I wrote and amended this book. After obtaining my doctoral degree with the book's first draft, I seldom have time to devot myself entirely to the study of this subject. However, since the classes I taught were dedicated to this subject and many thinking issues I was still struggling with, I've revised the book for several times. During the revision, each year I went back to visit Li Village that I studied. There might not be many new materials added each time I went back; but the field experience of each time strengthened my point of view which I put forward at the very beginning. In addition, due to having received the publication invitation from two publishers, I forced myself to make some relatively major changes to the text twice, but it was not published due to various reasons.

It seems that I am lucky this year. I had applied the Peking University Glory Publication Funds with the third revised draft of this book and won the funds. In addition, under the strong recommendation of Professor Ma Rong and Professor Pan Naigu in our institute to Tianjin Ancient Books Publishing House, my book was favored by the publisher. With the encouragement and urge from editors of Mr. Dong Lingsheng and Mrs. Hou Linli, I made drastic changes to the structure of the book without any great changes to the basic ideas. The version presented to readers now is the fourth draft since I finished my doctoral dissertation. Of course, I do hope that, if possible, it would be the final draft.

When I wrote my doctoral dissertation, I had attached a lengthy afterword and a long thank-you list of the professors and friends who had helped me which I wanted to rewrite as a preface to the book. Thanks to Professor Wang Mingming for his preface for this book, which explains the book's context, my original preface is actually not necessary to be present, so it is deleted. But names of people to whom I want to express my thanks are indeed in my mind all the time, because I owe them too much!

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I don't like the customary practices to use English letters to hide real names of people and places because it makes individuals as meaningless symbols and the cultural implications behind them have been totally lost.

Therefore, in this book, persons' and places' names are written in Chinese characters but some of them are not the real ones. Thus, any association according to those names is meaningless. It is hereby to make this record.

Zhao Xudong
October 26th, 2002
In the apartment of Everlasting Spring Garden, Peking University

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